

Übersetzung durch den Sprachendienst des Bundesministeriums für Wirtschaft und Klimaschutz.

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## **Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung - AWW)**

Foreign Trade and Payments Ordinance of 2 August 2013 (Federal Law Gazette [BGBl.] Part I p. 2865), as last amended by the Ordinance of 25 April 2022 (BAnz AT 02.05.2022 V1)

The following Ordinance is enacted on the basis

- of Section 12 subsection 1 sentence 1 in conjunction with Section 3 subsection 3, Section 4 subsection 1 and 3, Section 5, Section 9 sentence 1, Section 11, Section 19 subsection 4 sentence 2 and Section 27 subsection 4 sentence 2 and 3 of the Foreign Trade and Payments Act of 6 June 2013 (Federal Law Gazette I p. 1482), by the Federal Government and

- of Section 12 subsection 1 sentence 2 in conjunction with Section 4 subsection 2 and 3 of the Foreign Trade and Payments Act of 6 June 2013 (Federal Law Gazette I p. 1482) by the Federal Ministry for Economic Affairs and Energy in agreement with the Federal Foreign Office and the Federal Ministry of Finance:

### **Chapter 1 General provisions**

#### **Section 1 Applications for licences**

(1) Applications for the issuing of a licence can, unless stipulated otherwise below, be made by anyone undertaking the legal transaction requiring a licence or the action requiring a licence. Anyone who derives a claim from the legal transaction or a claim to the performance of the action shall also be entitled to make an application.

(2) Licences in the form of a general instruction (Section 35 sentence 2 of the Administrative Procedures Act) shall be issued ex officio.

#### **Section 2 Certificates pursuant to Article 9 of Directive 2009/43/EC**

(1) The Federal Office for Economic Affairs and Export Control (BAFA) shall upon application issue a certificate to a participant in foreign trade and payments which certifies his reliability, particularly with regard to his capacity to comply with the export provisions for goods cited in Part I Section A of the Export List (Annex AL) which he obtains in the context of a licence from another Member State of the European Union.

(2) In general, the following are necessary for certification of the applicant's reliability:

1. proven experience in defence activities, taking into account in particular the applicant's compliance with export restrictions, any relevant court decisions and the employment of experienced management staff;
2. relevant industrial activity with reference to goods cited in Part I Section A of the Export List in Germany, and especially capacity for systems/subsystems integration;
3. the appointment of a senior executive as the dedicated officer personally responsible for transfers and exports, who is personally responsible for the internal programme of compliance with export control procedures or the applicant's transfer and export management system and for the export and transfer audit staff and is a member of the managing body of the applicant;
4. a written commitment by the applicant signed by the senior executive cited in no. 3 that the applicant will take all the necessary steps to observe and enforce all the conditions for the end-use and export of a good cited in Part I Section A of the Export List which he receives;
5. a written commitment by the applicant signed by the senior executive cited in no. 3 that the applicant in the case of inquiries or investigations will provide the competent authorities with the necessary particulars on the end-users or the end-use of all goods which he exports, transfers or receives under a licence of another Member State of the European Union;
6. a description of the internal compliance programme with the applicant's export control procedure or its transfer and export management system countersigned by the senior executive cited in no. 3 which shows clearly that the senior executive cited in no. 3 is in charge of supervising the staff of the departments responsible for the applicant's export and transfer controls; this description shall contain particulars of
  - a) the organisational, human and technical resources allocated to the management of transfers and exports,
  - b) the allocation of responsibility at the applicant,
  - c) the internal audit procedures,
  - d) the measures to raise awareness and train the staff,
  - e) the arrangements to ensure physical and technical security,
  - f) the keeping of records,
  - g) the traceability of transfers and exports,
  - h) the address at which the competent authorities pursuant to Section 23 of the Foreign Trade and Payments Act can examine the records of the goods cited in Part I Section A of the Export List;
7. a declaration by the applicant that he

- a) will use for his own manufacturing the goods cited in Part I Section A of the Export List which he receives on the basis of a general instruction which makes reference to the issuing of the certificate and
  - b) will not finally release the goods in question or transfer them or export them to a third party except for the purpose of maintenance or repair.
- (3) The certificate's period of validity may not last longer than five years.

### **Section 3**

#### **Requirements as regards form**

- (1) Unless stipulated otherwise, administrative acts in foreign trade and payments transactions must be undertaken in writing. The Federal Office for Economic Affairs and Export Control (BAFA) can stipulate by general instruction to be published in the Federal Gazette that the undertaking of an administrative act must be applied for on a special form. Section 3a of the Administrative Procedures Act shall not be applied.
- (2) The Federal Office for Economic Affairs and Export Control (BAFA) can stipulate by general instruction to be published in the Federal Gazette from what point in time and under what preconditions applications for the undertaking of an administrative act in foreign trade and payments transactions can be submitted electronically and administrative acts can be undertaken electronically.

### **Section 4**

#### **Collective licences**

- (1) Licences can be issued in the form of individual licences, collective licences or general authorisations.
- (2) A collective licence can be issued to an applicant for an indefinite number of similar legal transactions or actions with one or several precisely defined end-users or countries of destination if this appears appropriate in view of the intended repetition of the legal transactions or actions.

### **Section 5**

#### **Return of administrative acts**

- (1) The party to whom an administrative act is issued on paper must return the document embodying this administrative act without delay to the competent authority if
- 1. the administrative act issued becomes ineffective before it has been fully utilised,
  - 2. the party to whom the administrative act is addressed abandons the intention to fully utilise the administrative act, or
  - 3. the administrative act or the document embodying this act has been substituted by a further decision, in particular a duplicate, and the original administrative act no longer contains any regulatory substance due to the substitution.

In all other respects this shall be without prejudice to Section 52 of the Administrative Procedures Act.

- (2) Via a general instruction to be published in the Federal Gazette, the competent authority can stipulate from what point in time and under what preconditions the obligation to return the document pursuant to subsection 1 can be dispensed with.
- (3) This shall be without prejudice to the obligation to return the document on the basis of legal acts of the European Union.

## **Section 6**

### **Retention of administrative acts**

(1) The party to whom an administrative act is addressed must retain the document embodying this administrative act following the expiry of the validity of the administrative act for a period of five years, unless the document has to be returned before this.

(2) Via a general instruction to be published in the Federal Gazette, the competent authority can

1. stipulate from what point in time and under what preconditions the obligation to return the document pursuant to subsection 1 can be dispensed with, or
2. regulate the other preconditions for the retention.

## **Section 7**

### **Boycott declaration**

The issuing of a declaration in foreign trade and payments transactions whereby a resident participates in a boycott against another country (boycott declaration) shall be prohibited. Sentence 1 shall not apply to a declaration that is made in order to fulfil the requirements of an economic sanction by one state against another state against which

1. the Security Council of the United Nations in accordance with Chapter VII of the United Nations Charter,
  2. the Council of the European Union in the context of Chapter 2 of the Treaty on European Union or
  3. the Federal Republic of Germany
- has also imposed economic sanctions.

## **Section 7a**

### **Areas regarded as the customs territory of the European Union**

In the application of Sections 8 to 13, 19, 20a to 27, 29 to 43, 46, 47, 49, 50, 52a, 52b and 75, the area of Northern Ireland shall be regarded as part of the European Union.

## **Chapter 2**

### **Export and transfer from Germany**

### **Division 1**

#### **Restrictions**

### **Subdivision 1**

#### **Exports requiring a licence**

## **Section 8**

### **Licensing requirements for the export of goods cited in Part I of the Export List**

(1) A licence shall be required for the export of the following goods:

1. the goods cited in Part I Section A of the Export List and
2. the goods cited in Part I Section B of the Export List.

(2) A licence pursuant to subsection 1 no. 1 shall not be required for the export of the following goods to Switzerland, Liechtenstein, Norway and Iceland:

1. firearms within the meaning of Section 1 subsection 4 of the Weapons Act in conjunction with Division 1 subdivision 1 no. 2 and Division 3 of Annex 1 to the Weapons

Act, to the extent that the Weapons Act and the ordinances on weapons law enacted on the basis of the Weapons Act apply to these, including minor parts and accessories,

2. ammunition within the meaning of Section 1 subsection 4 of the Weapons Act in conjunction with Division 1 subdivision 3 no. 1 and 2 of Annex 1 to the Weapons Act, to the extent that they are destined for firearms within the meaning of no. 1, including ammunition parts, and

3. reloading equipment to the extent that it is destined for the ammunition within the meaning of no. 2.

Sentence 1 shall not apply if the exporter is aware that the final destination of the goods is outside the states named in sentence 1 and outside the customs territory of the European Union.

(3) A licence pursuant to subsection 1 no. 2 shall not be required if according to the contract on which the export is based such goods to the value of not more than 5000 euro are to be delivered. In derogation of sentence 1, the export of software and technology shall always require a licence.

### **Section 9**

#### **Licensing requirements for the export of non-dual-use goods**

(1) The export of goods which are not cited in the Export List or in Annex I of 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) shall be subject to a licence if the exporter has been informed by the Federal Office for Economic Affairs and Export Control (BAFA) that

1. these goods are or can be wholly or partly destined for the construction or the operation of a facility for nuclear purposes within the meaning of Category 0 of Annex I of Regulation (EU) 2021/821 or for installation in such a facility and

2. the country of destination is Algeria, Iran, Iraq, Israel, Jordan, Libya, the Democratic People's Republic of Korea, Pakistan or Syria.

To the extent that reference is made in sentence 1 and below to an Annex of Regulation (EU) 2021/821, the Annex shall apply in the version applicable at the time.

(2) If the exporter is aware that goods which he would like to export and which are not cited in the Export List or in Annex I of Regulation (EU) 2021/821 are destined for a purpose cited in subsection 1 and the country of destination is one of those cited in subsection 1, he must inform the Federal Office for Economic Affairs and Export Control (BAFA) of this. The latter shall decide whether the export is subject to a licence. The goods may not be exported until the Federal Office for Economic Affairs and Export Control (BAFA) has licensed the export or has decided that no licence is required.

(3) Subsections 1 and 2 shall not apply

1. in the field regulated by Article 4 and 10 of Regulation (EU) 2021/821,

2. in cases in which according to the contract on which the export is based such goods are to be exported to the value of not more than 5000 euro; the export of software and technology shall always be subject to a licence irrespective of its value.

### **Section 10**

#### **Licensing requirements for the export of goods cited in Part II of the Export List**

The export of the goods marked by "G" in Part II column 3 of the Export List shall be subject to a licence. This shall not apply if the goods correspond to the marketing standards or the

minimum requirements published in the Official Journal of the European Union which have been stipulated in Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347 of 20 December 2013, p. 671), in each case in the version applicable at the time. Sentence 2 shall not be applied to the extent that exceptions are provided in Regulation (EU) No 1308/2013 regarding compliance with the marketing standards or minimum requirements.

**Subdivision 2**  
**Transfer from Germany subject to licence**

**Section 11**  
**Licensing requirements for the transfer of goods**

(1) The transfer of goods cited in Part I Section A of the Export List shall be subject to a licence. This shall not apply to

1. firearms within the meaning of Section 1 subsection 4 of the Weapons Act in conjunction with Division 1 subdivision 1 no. 2 and Division 3 of Annex 1 to the Weapons Act, to the extent that the Weapons Act and the ordinances on weapons law enacted on the basis of the Weapons Act apply to these, including minor parts and accessories,
2. ammunition within the meaning of Section 1 subsection 4 of the Weapons Act in conjunction with Division 1 subdivision 3 no. 1 and 2 of Annex 1 to the Weapons Act, to the extent that they are destined for firearms within the meaning of no. 1, including ammunition parts, and
3. reloading equipment to the extent that it is destined for ammunition within the meaning of no. 2.

Sentence 2 shall not apply if the operator is aware that the final destination of the goods is outside the customs territory of the European Union and outside the territory of Switzerland, Liechtenstein, Norway and Iceland.

(2) The transfer of the goods cited in Part I Section B of the Export List shall be subject to a licence if the operator is aware that the final destination of the goods is outside the customs territory of the European Union.

(3) The transfer of goods which are not cited in the Export List or in Annex I of Regulation (EU) 2021/821 shall be subject to a licence if the final destination of the goods lies outside the customs territory of the European Union and the operator has been informed by the Federal Office for Economic Affairs and Export Control (BAFA) that these goods are or can be wholly or partly destined for the construction or operation of a facility for nuclear purposes within the meaning of Category 0 of Annex I of Regulation (EU) 2021/821 or for installation in such a facility and the country of destination is one cited in Section 9 subsection 1 sentence 1 no. 2.

(4) If the operator is aware that goods within the meaning of subsection 3 which he would like to transfer and the final destination of which lies outside the customs territory of the European Union are destined for a purpose cited in subsection 3 and the country of destination is one cited in Section 9 subsection 1 sentence 1 no. 2, he must inform the Federal Office for Economic Affairs and Export Control (BAFA) of this. The latter shall decide whether the transfer is subject to a licence. The goods may not be transferred until the Federal Office for Economic Affairs and Export Control (BAFA) has licensed the transfer or has decided that no licence is required.

(5) Subsections 2 to 4 shall not apply if

1. the export of the goods pursuant to Section 8 or Section 9 is subject to a licence and a general licence exists for such an export,
2. the goods are to be subjected to treatment or processing at the destination within the customs territory of the European Union to which they are to be transported within the meaning of Article 60(2) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269 of 10 October 2013, p. 1) or
3. goods are to be exported to the value of not more than 5000 euro; the transfer of software and technology shall always be subject to a licence irrespective of its value.

**Division 2**  
**Procedural and reporting provisions**

**Subdivision 1**  
**Export and re-export**

**Section 12**  
**Presentation and declaration**

- (1) Every export consignment must be presented to the customs office of export by the declarant prior to the export along with an export declaration or a re-export declaration.
- (2) Anyone who as an exporter pursuant to Article 1 Number 19 of the Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343/1 of 29 December 2015, p. 1) or as declarant pursuant to Article 170 of Regulation (EU) No 952/2013 wishes to ship goods from the customs territory of the European Union must lodge one of the following declarations in accordance with the deadlines of Article 244 of Delegated Regulation (EU) 2015/2446:

1. an export declaration within the meaning of Article 5(12) of Regulation (EU) No 952/2013 and of Article 221(2) of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343 of 29 December 2015, p. 558) or
2. a re-export declaration within the meaning of Article 5(13) and Article 270 of Regulation (EU) No 952/2013.

The declaration must comply with the requirements of the following provisions:

1. of Articles 162, 166, 167 and 182 of Regulation (EU) No 952/2013 and
  2. of Annex 9 Appendix A and Appendix C1 of Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446 (OJ L 69 of 15 March 2016, p. 1).
- (3) The declaration pursuant to subsection 2 must be lodged electronically; cases pursuant to Article 158(2) of Regulation (EU) No 952/2013 in conjunction with Article 136(2), Articles 137 and 139(2) and Articles 140, 141 and 143 of Delegated Regulation (EU) 2015/2446 are exempted from this. The declaration must include the particulars in accordance with Annex 9 Appendix A and Appendix C1 and the particulars pursuant to boxes 8, 15a, 20, 22, 24, 29 and 34b of Appendix C1 of Delegated Regulation (EU) 2016/341. The exporter within the meaning of Section 2 subsection 2 of the Foreign Trade and Payments Act or Article 2



number 3 of Regulation (EU) 2021/821 must be cited separately where he does not correspond to the exporter pursuant to Article 1 number 19 of Delegated Regulation (EU) 2015/2446. The declaration must be lodged using the ATLAS electronic export procedure or the Plus internet export declaration in line with the relevant procedural instruction for the ATLAS electronic export procedure, published by the Federal Ministry of Finance in its official journal. In the case of a fault in the data processing system of the customs office or of the declarant, the declarant must transmit the customs declaration to the customs office and if necessary the application pursuant to subsection 4 in line with the relevant procedural instruction for the ATLAS electronic export procedure, published by the Federal Ministry of Finance in its official journal.

(4) The customs office can in response to an application permit the presentation at a different place in the district of the customs office of export if the goods are being packed or loaded there and the export declaration or the re-export declaration is lodged in time for the export consignment to be processed by the customs office. The non-physical transmission of goods does not need to be processed by the customs office.

(5) For goods transported in pipelines, the competent customs office at the point of exit shall be every customs office in whose district access to the pipeline in which the good is transported exists.

### **Section 13**

#### **Supplementary provisions for the presentation and declaration in connection with maritime vessels**

(1) The carrier, the transporter or, if there is no freight transaction, the owner of the load must submit for each vessel departing seawards from a maritime port a cargo manifest pursuant to subsection 2 and 3 sentence 1 to the competent main customs office.

(2) The cargo manifest must contain the following particulars:

1. the name of the carrier, the vessel, the port of loading and the port of unloading,
2. the number, type and identifiers of the containers,
3. the designation and the quantity of the laden goods in line with the bill of lading or other cargo documents and
4. the declaration that the cargo manifest includes all the goods laden on the vessel.

(3) The cargo manifest must be lodged with the main customs office immediately following the completion of loading. The main customs office can demand that cargo manifests which are produced by means of a data-processing facility are lodged on data media which can be processed by machine or via long-distance data transmission.

(4) The main customs office can, to the extent that the supervision of the export is not impaired, dispense in general or in an individual case with the submission of a cargo manifest.

(5) In the case of unladen vessels the master of the vessel must declare in writing or electronic form before the departure of the vessel that the vessel is unladen.

### **Section 14**

#### **Procedure for the processing by the customs office**

(1) In order to examine the admissibility of the export, the customs office of export and the customs office at the point of exit can demand further particulars and evidence from the exporter or the declarant.



(2) The customs office at the point of exit shall reject the customs processing if the goods have not been presented and declared in accordance with Section 12. In these cases, in the case of shipment by a postal operator, the post office, or in the case of shipment by a rail company, the dispatching office shall refuse to accept the goods.

(3) The declarant may not remove goods or have them removed or load goods or have them loaded prior to the conclusion of the examination by the customs office of export from the place of presentation or from the permitted place pursuant to Section 12 subsection 4 prior to the expiry of the time cited in the application pursuant to Section 12 subsection 4.

(4) The declarant may not remove goods or have them removed or load goods or have them loaded prior to the conclusion of the examination by the customs office at the point of exit from the place of presentation.

### **Section 15** **Simplified customs declaration**

(1) If a declarant wishes to make use of the simplified customs declaration pursuant to Article 166 of Regulation (EU) No 952/2013, he must at least provide the particulars in the export declaration or the re-export declaration that are required for this procedure pursuant to Annex 9 Appendix A of Delegated Regulation (EU) 2016/341. Where the goods are liable for export duties or subject to any other measures provided for under the common agricultural policy, the declarant must also provide all the particulars required for the proper application of such duties or measures.

(2) Within 30 days following its receipt by the customs office which must be cited in the simplified customs declaration or in the approval pursuant to subsection 4, the declarant must

1. complete the simplified declaration with the necessary particulars pursuant to Section 12 subsection 2 sentence 2 number 2 or
2. replace it with a complete declaration.

(3) The declarant can summarise completions or replacements of several simplified customs declarations in a supplementary or replacement declaration if the entire export procedure takes place in Germany and the goods are exported in a single consignment.

(4) The main customs office shall be responsible for approving the regular use of simplified customs declarations pursuant to Article 166(2) of Regulation (EU) No 952/2013 in conjunction with Article 145 of Delegated Regulation (EU) 2015/2446.

### **Section 16** **Entry in the declarant's records**

(1) In the application for approval of an entry in the declarant's records pursuant to Article 182 of Regulation (EU) No 952/2013, the goods to be exported must be identified and the number of the commodity classification for foreign trade statistics must be cited; this is issued by the Federal Statistical Office in 65189 Wiesbaden, Gustav-Stresemann-Ring 11, and can also be obtained via [www.destatis.de](http://www.destatis.de).

(2) If a large number of diverse goods are to be constantly exported, these can be cited in the application pursuant to subsection 1 in groups of goods with a collective indication and with the relevant item number of the commodity classification.

(3) The main customs office shall be responsible for the approval of the entry in the declarant's records.

### **Section 17** **(repealed)**

## **Section 18**

### **Collection of export data on the export of oil and gas**

(1) When goods with commodity codes 2707 10 00 to 2707 50 00, 2709 00 10 to 2711 14 00, 2711 21 00, 2711 29 00, 2712 10 10 to 2712 90 11, 2712 90 31 to 2713 20 00, 2713 20 00, 2713 90 90 and 3403 19 80 of the commodity classification for foreign trade statistics are exported, the exporter must provide the following particulars to the Federal Office for Economic Affairs and Export Control (BAFA) for the purpose of market observation:

1. the name and address of the exporter,
2. the description of the goods and the commodity code,
3. the number assigned to the exporter for the registration and identification of the economic operators within the meaning of Article 9 of Regulation (EU) No 952/2013 in conjunction with Article 1(18) of Delegated Regulation 2015/2446 (EORI number),
4. the procedure code,
5. the country of destination,
6. the net weight of the goods,
7. the supplementary unit,
8. the customs office of export,
9. the date of exit.

The exporter shall transmit these particulars to the competent customs office by electronic means together with the export declaration.

(2) The Federal Information Technology Centre shall forward the data on behalf of the competent customs office for the purpose of market observation to the Federal Office for Economic Affairs and Export Control (BAFA).

(3) The Federal Office for Economic Affairs and Export Control (BAFA) shall delete the data after a period of two years at the latest. The period shall begin at the end of the year in which the data were transferred from the competent customs office.

## **Section 19**

### **Export of fruit and vegetables**

(1) In the case of export which is not subject to an export licence of fruit and vegetables which are marked with "G" in Part II Chapters 7, 8, 9 and 12 of the Export List, one of the following documents must be presented to the customs office of export together with the export declaration:

1. a valid certificate pursuant to the version in force at the time of Annex III of Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ L 157 of 15 June 2011, p. 1), most recently amended by Regulation (EU) No 988/2012 (OJ L 297 of 26 October 2012, p. 9) (conformity certificate),
2. a communication from the competent inspection body that a conformity certificate has been issued for the relevant lots, or
3. a communication from the competent inspection body that a conformity certificate has been dispensed with for the relevant lots on the basis of a risk analysis (waiver).

If the entire export procedure takes place in Germany, the document required pursuant to nos. 1 to 3 can be presented to the customs office at the point of exit.

(2) If the export clearance takes place electronically pursuant to Section 12 subsection 3 sentence 1, the exporter must ensure that the documents cited in subsection 1 are available to himself or to his representative at the time when the export clearance is applied for. The presentation of the documents in paper form shall only be necessary for export clearance if the customs office so requires. The documents shall be presented to the competent customs office on a monthly basis or in line with a specific agreement. The documents must include the registration number of the export declaration.

(3) In the case of the export which is not subject to a licence of the goods cited in subsection 1 sentence 1 in the common transit procedure for the carriage of goods by rail pursuant to Annex I Title III Chapter VII or with simplifications in the common transit procedure “status of an authorised consignor” pursuant to Annex I Title III Chapter V of the Convention of 20 May 1987 between the European Economic Community, the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway, the Kingdom of Sweden and the Swiss Confederation on a common transit procedure (OJ L 226 of 13 August 1987, p. 2), most recently amended by Decision No 4/2012 (OJ L 297 of 26 October 2012, p. 34), in the version applicable at the time, instead of the document required pursuant to subsection 1, a copy of this document can be presented to the customs office of export together with the document in accordance with Annex 9 Appendix A and Appendix C1 of Delegated Regulation (EU) 2016/341. In the case of a fault in the data processing system of the customs office or of the declarant, the declarant must transmit the customs declaration to the customs office in line with the relevant procedural instruction for the ATLAS electronic export procedure, published by the Federal Ministry of Finance in its official journal. Subsection 2 shall apply *mutatis mutandis*.

(4) In the case of export which is not subject to a licence of the goods cited in subsection 1 sentence 1 where a simplified customs declaration is lodged pursuant to Section 15, or where an entry is made in the declarant's records pursuant to Section 16, instead of the document required pursuant to subsection 1, a copy of this document can be presented to the customs office of export within 30 days of the release of the export consignment in the export procedure. The copy must bear the registration number of the original export declaration.

(5) In the case of export which is not subject to a licence of processed fruit and vegetables for which marketing standards or minimum requirements have been enacted on the basis of Regulation (EU) No 1308/2013, either a conformity certificate or a waiver of the Federal Agency of Agriculture and Food must be presented to the customs office of export together with the export declaration. Subsection 2 shall apply *mutatis mutandis*.

## **Section 20**

### **Re-exports**

To the extent that re-exports pursuant to Article 270 of Regulation (EU) No 952/2013 require a re-export declaration, the provisions of this subdivision shall apply *mutatis mutandis*.

## **Section 20a**

### **Exit summary declaration**

(1) Where no export declaration or re-export declaration was lodged, the transporter must lodge an exit summary declaration pursuant to Article 271 of Regulation (EU) No 952/2013 within the deadlines of Article 244 of Delegated Regulation (EU) 2015/2446 at the customs office of exit. The exceptions from the obligation to lodge a pre-departure declaration pursuant to Article 245 of Delegated Regulation (EU) 2015/2446 must be observed.

(2) The exit summary declaration must contain the particulars in accordance with Annex 9 Appendix A and Appendix C1 of Delegated Regulation (EU) 2016/341.

(3) Section 14 subsection 4 shall apply *mutatis mutandis*.

#### **Section 20b** **Re-export notification**

(1) If goods are to be exported from the customs territory of the Union and neither a customs declaration nor a re-export declaration nor an exit summary declaration is required, the person responsible pursuant to Article 267(2) of Regulation (EU) No 952/2013 for the presentation of the goods on exit must, prior to the transfer of the goods out of the customs territory of the Union, lodge a re-export notification within the meaning of Article 5(14) and Article 274 of Regulation (EU) No 952/2013 in accordance with the requirements of Annex 9 Appendix A and Appendix C1 of Delegated Regulation (EU) 2016/341 to the customs office of exit.

(2) Section 14 subsection 4 shall apply *mutatis mutandis*.

#### **Subdivision 2** **Exports requiring a licence**

##### **Section 21** **Export licence**

(1) Only the exporter can apply for an export licence.

(2) The application for licensing of the export of goods cited in Part I of the Export List must be accompanied by documents providing evidence of the end-user, the final destination and the intended purpose. The Federal Office for Economic Affairs and Export Control (BAFA) can dispense with the presentation of these documents or require documents other than those cited in sentence 1 as evidence of the destination of the goods.

(3) In the case of certain countries, the Federal Office for Economic Affairs and Export Control (BAFA) can recognise an International Import Certificate of the country of destination.

(4) In the case of certain countries, the Federal Office for Economic Affairs and Export Control (BAFA) can require that the application for licensing of the export of goods cited in Part I of the Export List must be accompanied by a declaration in which the recipient of the goods commits to destroy the goods to be replaced by the new purchase. If the new purchase is to cover an additional need, the recipient must instead explain the reasons for the additional need and commit to destroying the newly procured weapons when they are subsequently removed from service.

(5) In the case of certain countries, the Federal Office for Economic Affairs and Export Control (BAFA) can require that the application for licensing of the export of goods cited in Part I of the Export List must be accompanied by documentation stating the agreement of the country of destination to accept on-the-spot controls by German agencies of the end-use and of the compliance of the recipient with obligations assumed in accordance with subsection 4 as well as documentation of the marking placed on the goods.

#### **Section 22** **Information and accounting obligations**

(1) Exporters of the goods cited in Part I Section A of the Export List shall be required to inform the recipient at the latest when the export takes place of the restrictions stipulated in the issued export licence regarding an export from the country of destination.

(2) Without prejudice to other legal provisions, the exporter shall be required to keep detailed registers or records of his exports of the goods cited in Part I Section A of the Export List. These must contain commercial documents with the following particulars:

1. the description of the good and its item number in the Export List,
2. the quantity and value of the good,
3. the date of the export or of individual partial exports,
4. the name and the address of the exporter and the recipient,
5. where known, the end-use and the end-user of the good and
6. the statement that the recipient has been informed in accordance with subsection 1.

(3) The registers or records pursuant to subsection 2 sentence 1 shall be retained for a period of five years following the end of the calendar year in which the export took place.

### **Section 23**

#### **Export clearance**

(1) If the export clearance is undertaken on the basis of an electronic export declaration pursuant to Section 12 subsection 3 sentence 1, it shall not normally be necessary to present the export licence in paper form at the export clearance. The exporter must however ensure that the export licence is available to himself or to his representative at the time when the export clearance is applied for. In the case of Section 12 subsection 3 sentence 5, the export licence must be presented during the export clearance.

(2) For the export clearance, the declarant must provide the following particulars in the electronic export declaration with regard to the export licence:

1. the coding of the licence,
2. the item number on the Export List or the number or item on the lists of goods in the statutory instruments of the Council or the Commission of the European Union in the field of foreign trade and payments law,
3. the reference number,
4. the date of issue and
5. the cessation of validity.

(3) In the case of exports based on licences in the form of general instructions, the particulars pursuant to subsection 2 no. 3 to 5 are not required.

(4) If the exporter has received a certificate from the Federal Office for Economic Affairs and Export Control (BAFA) confirming that the export does not require a licence, the applicant must state the following regarding the certificate in the electronic export declaration for the export clearance:

1. the coding of the certificate,
2. the reference number,
3. the date of issue and
4. the cessation of validity.

(5) The export licences issued by the Federal Office for Economic Affairs and Export Control (BAFA) shall be transcribed electronically by the customs offices. Export licences for the repeated temporary export or export licences issued in other Member States of the

European Union must be presented by the declarant in paper at the electronic export clearance and shall be transcribed manually by the customs office.

(6) If a transcription is necessary, the declarant must also provide the following particulars in addition to the particulars pursuant to subsection 2:

1. the value and, to the extent that the export licence contains particulars of this, the quantity of the goods to be exported and
2. the serial number of the goods item in the licence.

(7) Subsections 2 to 6 shall apply *mutatis mutandis* to the lodging of a re-export declaration pursuant to Section 20 and for the presentation of a retrospective export or re-export declaration pursuant to Article 337(1) sentence 3 of Implementing Regulation (EU) 2015/2447.

## **Section 24**

### **Data exchange**

(1) For the purpose of export clearance of goods requiring an export licence, the competent customs office shall access the data from the export licences issued by the Federal Office for Economic Affairs and Export Control (BAFA) via the Federal Information Technology Centre from the Federal Office for Economic Affairs and Export Control (BAFA). If the Federal Office for Economic Affairs and Export Control (BAFA) has issued a certificate confirming that the export does not require a licence, this certificate shall replace the export licence pursuant to sentence 1.

(2) The Federal Information Technology Centre shall forward the following data to the Federal Office for Economic Affairs and Export Control (BAFA) on behalf of the competent customs office for the purpose of tracing the utilisation of issued export licences:

1. the value of the exported goods,
2. the time of exit,
3. the number of the export licence,
4. the item number on the Export List or the number or item on the lists of goods in the statutory instruments of the Council or the Commission of the European Union in the field of foreign trade and payments law, and
5. where cited, the quantity of the goods exported and the serial number of the goods item in the licence.

(3) The competent customs office and the Federal Office for Economic Affairs and Export Control (BAFA) shall delete the data transmitted pursuant to subsections 1 and 2 after a period of five years at the latest, to the extent that they do not have to be retained pursuant to other provisions. The period shall begin at the end of the year in which the data were transmitted to the competent customs office or the Federal Office for Economic Affairs and Export Control (BAFA).

## **Section 25**

### **Export clearance in another Member State**

(1) If the exporter wishes to use an export licence issued by the Federal Office for Economic Affairs and Export Control (BAFA) for export clearance in another Member State of the European Union, he must present the export licence together with the export accompanying document or a comparable export document under customs law to the customs office competent for him or for his company headquarters within a month after the exit of the goods from the customs territory of the European Union.

(2) Following retrospective electronic recording of the export licence by the competent customs office, the Federal Information Technology Centre shall forward the following data to the Federal Office for Economic Affairs and Export Control (BAFA) on behalf of the competent customs office for the purpose of tracing the utilisation of issued export licences:

1. the data cited in Section 24 subsection 2 no. 1 and 3 to 5 and
2. the time of the retrospective recording.

(3) Section 24 subsection 3 shall apply *mutatis mutandis*.

### **Section 26**

#### **Recording requirements**

(1) The exporter shall be required to keep detailed registers or records for each transcription undertaken by a customs office pursuant to Section 23 or Section 25 with reference to the export declaration. These must contain the following particulars:

1. the registration number of the export declaration,
2. the date of acceptance of the export declaration,
3. the designation of the customs office at which the transcription took place,
4. the application number for the licence,
5. the quantity or the value of the transcribed goods and
6. the residual quantity or the residual value of the goods.

(2) The registers or records must be kept for a period of five years.

### **Subdivision 3**

#### **Transfer subject to licence and certification procedure**

### **Section 27**

#### **Applicable provisions**

Section 21 shall apply *mutatis mutandis* to the transfer of goods requiring a licence. Furthermore, Section 22 shall apply *mutatis mutandis* to the transfer of goods cited in Part I Section A of the Export List.

### **Section 28**

#### **Certification procedure**

(1) The Federal Office for Economic Affairs and Export Control (BAFA) shall stipulate by way of a general instruction to be published in the Federal Gazette the documents to be attached to the application for the issue of a certificate pursuant to Section 2.

(2) Section 6 subsection 1 shall apply *mutatis mutandis* to certificates.

(3) The Federal Office for Economic Affairs and Export Control (BAFA) shall publish and regularly update a list of the certified recipients and shall inform the European Parliament, the other Member States of the European Union and the European Commission of its content so that these bodies can publish a central register of the recipients certified by the Member States on their website.

## **Chapter 3**

### **Import**

### **Division 1**

#### **Restrictions and general procedural provisions**



## **Section 29**

### **Restrictions on use**

If the import of a good is permitted under the precondition or licensed under the condition that the good may only be used in a certain way, the seller must inform in a verifiable way every purchaser of the good of this restriction on use when it is sold. The importer and the purchaser may only use the good in the prescribed manner.

## **Section 30**

### **Confirmations of International Import Certificates and Delivery Verification Certificates**

(1) Anyone who imports or transfers goods into Germany can apply for an International Import Certificate (IIC) or a Delivery Verification Certificate (DVC) from the Federal Office for Economic Affairs and Export Control (BAFA). Section 21 subsection 2 shall apply *mutatis mutandis*. The application should be approved if the certificate is required for presentation to a foreign export control authority.

(2) The importer or operator must apply for the International Import Certificate and the delivery verification on a form stipulated by the Federal Office for Economic Affairs and Export Control (BAFA) by means of a general order to be published in the Federal Gazette, and provide the particulars required by these forms. Section 21 subsection 2 sentence 2 shall apply *mutatis mutandis*.

(3) Documentation of the import or transfer of the good described in the application for the International Import Certificate must be provided to the Federal Office for Economic Affairs and Export Control (BAFA) without delay. If the applicant abandons his intention to import the good or to transfer it into Germany, he must report this without delay to the Federal Office for Economic Affairs and Export Control (BAFA) and return the certificate without delay or inform it of its whereabouts. If the applicant wishes to deliver the good to another country of destination, he must, before the good leaves the country of dispatch, obtain from the Federal Office for Economic Affairs and Export Control (BAFA) a new certificate which cites this country of destination.

(4) Section 8 subsection 1 and subsection 2 sentence 1 of the Foreign Trade and Payments Act shall apply *mutatis mutandis*.

## **Division 2**

### **Import clearance**

## **Section 31**

### **Application for import clearance**

(1) The importer must apply for the import clearance at a customs office. Instead of the importer, a Union resident can apply for the import clearance on his own behalf for goods which are being delivered on the basis of an import contract if he

1. has been involved in the conclusion of the import contract as a trade representative of the non-Union contracting party or,
2. exercising his occupation on the basis of a contract with the non-Union contracting party,
  - a) is involved in the shipment of the goods or
  - b) lodges the customs declaration to release the goods for free circulation.

(2) The application for import clearance must be made

1. when the customs declaration to release the goods for free circulation is lodged or

2. prior to the use, consumption, treatment or processing of the goods in a free zone or on the island of Heligoland.

Upon application of the importer, the import clearance can be brought forward in time. This shall be without prejudice to Section 42 subsection 1 and 3.

(3) If the importer is permitted to place goods in a customs procedure on the basis of a simplified customs declaration pursuant to Article 166 of Regulation (EU) No 952/2013 or a simplified customs declaration as an entry in declarant's records pursuant to Article 182 of Regulation (EU) No 952/2013, the documents absolutely required for the placement in the declared customs procedure pursuant to Article 163(1) of Regulation (EU) No 952/2013 must be kept available at the time of the lodging of the simplified customs declaration or at the time of the entry in declarant's records. In derogation of subsection 2 number 1, documents which are not absolutely required for the placing of goods in the declared customs procedure need only, in accordance with Article 167(1) of Regulation (EU) No 952/2013, to be kept available with the supplementary customs declaration. In order to safeguard the interests of import legislation, the customs offices can require that the documents to be kept available pursuant to sentence 1 are presented.

(4) The application can be lodged electronically or on paper.

(5) The importer must cite in the application the description of the goods in language according to commercial practice or common usage and the number of the commodity classification for the foreign trade statistics.

### **Section 32**

#### **Import documents**

(1) If the import declaration is applied for electronically, the importer must ensure that the following documents are available to him or to his representative at the time of the application for the import clearance:

1. the invoice or other documents disclosing the country of purchase or dispatch and the country of origin of the goods, and,
2. if so envisaged in an act of the European Union,
  - a) a Certificate of Origin or a Declaration of Origin in accordance with Section 38,
  - b) a monitoring document in accordance with Section 36,
  - c) an import licence in accordance with Section 39 or an import licence in the context of a common market organisation or a trade regime,
  - d) a certificate of conformity or waiver in accordance with Section 42 subsection 2.

The documents cited in sentence 1 no. 1 and 2 letter a and d must be presented to the customs office on demand at the import clearance in an individual case.

(2) If the importer uses the electronic import clearance pursuant to subsection 1, he must present the documents cited in subsection 1 no. 2 letter a to d to the competent customs authority on a monthly basis or in line with a specific agreement with the competent customs authority.

(3) If the import clearance is applied for on paper, the documents cited in subsection 1 and an import control report in accordance with Section 35 subsection 1 must be presented.

### **Section 33**

#### **Procedure for import clearance**

(1) The customs office shall examine the admissibility of the import. It shall refuse to clear the import if

1. the documents required for the import clearance pursuant to Section 32 subsection 1 sentence 1 no. 2 letter a to d are not available to the importer or to his representative,
2. the documents cited in Section 32 subsection 1 sentence 1 no. 2 letter a to d are not available at the import clearance pursuant to Section 32 subsection 3 or
3. the goods do not correspond to the particulars of the documents within the meaning of Section 32 subsection 1 sentence 1 or subsection 3.

If there are serious doubts about the correctness of a Certificate of Origin, the customs offices can demand further evidence to prove the origin and thereby render the import clearance possible.

(2) In the case of import of water, electrical current, town gas, long-distance gas or similar gases in pipelines, there shall be no import clearance.

#### **Section 34** **Collecting of import data**

(1) In the case of the import of goods with commodity codes 0105 11 11 to 0105 99 50, 0207 11 10 to 0207 13 70, 0207 13 99 to 0207 14 70, 0207 14 99 to 0207 26 80, 0207 26 99 to 0207 27 80, 0207 27 99 to 0207 42 80, 0207 44 10 to 0207 44 81, 0207 44 99 to 0207 45 81, 0207 45 99 to 0207 52 90, 0207 54 10 to 0207 54 81, 0207 54 99 to 0207 55 81, 0207 55 99 to 0207 60 81, 0207 60 99, 0209 90 00, 0401 10 10 to 0403 10 39, 0403 90 11 to 0403 90 69, 0404 10 02 to 0407 90 90, 0408 11 80, 0408 19 81, 0408 19 89, 0408 91 80, 0408 99 80, 0701 10 00, 0701 90 50, 0701 90 90, 1105 10 00, 1105 20 00, 1602 32 11, 1602 39 21, 1702 11 00, 1702 19 00, 2106 90 51, 2309 90 20, 3502 11 90 and 3502 19 90 to 3502 90 70 of the commodity classification for foreign trade statistics, the importer must provide the following particulars to the Federal Agency of Agriculture and Food for the purpose of market observation:

1. the type of declaration,
2. the document number,
3. the time of the acceptance of the declaration,
4. the recipient's name and address,
5. the recipient's EORI number,
6. the country of dispatch,
7. the exchange rate,
8. the nature of the transaction,
9. the description of the good,
10. the commodity code,
11. the country of origin,
12. the gross mass,
13. the procedure code,
14. the net mass,

15. the statistical quantity in a supplementary unit,
16. the paper under import law (number and date) and
17. the statistical value.

(2) In the case of the import of goods with commodity codes 2705 00 00, 2707 10 00, 2707 20 00, 2707 30 00, 2707 50 00, 2709 00 10, 2709 00 90, 2710 12 11, 2710 19 99, 2710 99 00, 2711 11 00 to 2711 29 00, 2712 10 10 to 2713 20 00, 2713 90 90, 2715 00 00 and 3403 19 80 of the commodity classification for foreign trade statistics, the importer must provide the following particulars to the Federal Office for Economic Affairs and Export Control (BAFA) for the purpose of market observation:

1. the type of declaration,
2. the document number,
3. the time of the acceptance of the declaration,
4. the recipient's name and address,
5. the recipient's EORI number,
6. the declarant's name and address,
7. the declarant's EORI number,
8. the country of dispatch,
9. the description of the good,
10. the commodity code,
11. the country of origin,
12. the gross mass,
13. the procedure code,
14. the net mass,
15. the statistical quantity in a supplementary unit and
16. the statistical value.

(3) The importer shall transmit the particulars pursuant to subsections 1 and 2 to the competent customs office electronically with the import declaration. The Federal Information Technology Centre shall forward the data on behalf of the competent customs office for the purpose of market observation in the case of subsection 1 to the Federal Agency of Agriculture and Food and in the case of subsection 2 to the Federal Office for Economic Affairs and Export Control (BAFA).

(4) The Federal Agency of Agriculture and Food and the Federal Office for Economic Affairs and Export Control (BAFA) shall delete the data after a period of two years at the latest. The period shall begin at the end of the year in which the data were transmitted from the competent customs office.

### **Section 35**

#### **Import control report**

(1) In the case of the import of goods with commodity codes 2709 00 10, 2709 00 90, 2711 11 00 and 2711 21 00 of the commodity classification for foreign trade statistics, an import control report must be presented for the purpose of market observation if the import clearance is applied for in paper form and the value of the import consignment exceeds 1000

euro. The competent customs office shall forward the data for the purpose of market observation to the Federal Office for Economic Affairs and Export Control (BAFA).

(2) When goods are imported, a form designated as the import control report shall be used which shall correspond to the form for the reporting document for the import of goods to be presented in each case pursuant to Sections 4 and 6 of the cleaned version of the Foreign Trade Statistics Act published in Federal Law Gazette Part II, division number 7402-1, most recently amended by Article 10 of the Act of 25 April 2007 (Federal Law Gazette I p. 594), and Section 15 of the Ordinance Implementing the Foreign Trade Statistics Act in the version published on 29 July 1994 (Federal Law Gazette I p. 1993), most recently amended by Article 1 of the Ordinance of 8 November 2011 (Federal Law Gazette I p. 2230), in the version applicable at the time. The Federal Office for Economic Affairs and Export Control (BAFA) can stipulate different requirements by way of a general instruction to be published in the Federal Gazette. It can also permit reports in a different form.

(3) In the case of the import of goods with a simplified customs declaration pursuant to Article 166 of Regulation (EU) No 952/2013 or an entry in declarant's records pursuant to Section 182 of Regulation (EU) No 952/2013, the importer must transmit the used pages of the import control report directly following the import to the Federal Office for Economic Affairs and Export Control (BAFA). The import control report with the last entry for the settlement period must however be presented at the import clearance.

### **Section 36**

#### **Prior import monitoring**

(1) If the import of a good is subject to monitoring on the basis of an act of the European Union, in the case of an import which is not subject to a licence a monitoring document on an import document in line with the acts of the European Union shall be issued in response to an application. The import document shall be valid throughout the Union.

(2) Only the importer shall be entitled to apply for the document. In his application for the issuing of a monitoring document, he shall provide the particulars stipulated in the act of the European Union. Different types of goods, different countries of purchase or different countries of origin may not be included together in one application.

(3) The Federal Office for Economic Affairs and Export Control (BAFA) shall be responsible for the issuing of the monitoring document. It shall stipulate by a general instruction the preconditions for the issuing and use of the monitoring document in another Member State of the European Union and shall publish these in the Federal Gazette.

(4) For the purpose of the import monitoring pursuant to subsection 1, the announcement pursuant to Section 39 subsection 1 sentence 1 can stipulate that instead of the monitoring document the import licence must be presented. Subsections 1 to 3 shall apply *mutatis mutandis*.

(5) The Federal Office for Economic Affairs and Export Control (BAFA) shall enter the following particulars into the monitoring document:

1. the date until which the monitoring document may be used for import clearance,  
and
2. the percentage up to which
  - a) an exceeding of the price per unit for which the transaction was carried out is admissible or
  - b) an exceeding of the cited total value or the cited quantity in normal commercial units is permissible in the import clearance.

### **Section 37**

#### **Import clearance in the case of prior import monitoring**

(1) If the import clearance takes place on the basis of an electronic import declaration, the customs offices shall obtain the data of the monitoring document in the automated procedure. Section 32 subsection 1 sentence 1 no. 2 letter b shall apply *mutatis mutandis*. In the case of electronic import clearance pursuant to sentence 1, monitoring documents shall normally be transcribed electronically by the customs offices if they are destined for use in Germany. Monitoring documents issued in other Member States of the European Union must be presented and transcribed in paper form.

(2) If the import clearance takes place on the basis of an import declaration in paper form, the importer must present the monitoring document to the competent customs office. The customs office shall note on the monitoring document the quantity or the value of the cleared goods.

(3) The customs office shall reject the import clearance

1. if the application for import clearance is made later than on the last day of validity of the monitoring document,
2. if the price per unit at which the transaction is carried out exceeds the price cited in the monitoring document by more than the percentage noted in the monitoring document or
3. to the extent that the total value or the total quantity of the goods declared for import is higher than the percentage noted in the monitoring document.

### **Section 38**

#### **Certificate of Origin and Declaration of Origin**

(1) If on the basis of an act of the European Union a Certificate of Origin or a Declaration of Origin is required for goods, these must be presented at the import clearance. Section 32 subsection 1 sentence 1 no. 2 letter a and sentence 2 and Section 32 subsection 3 shall apply *mutatis mutandis*. Sentences 1 and 2 shall not apply if the value of the goods contained in the import consignment for which a Certificate of Origin or a Declaration of Origin is prescribed does not exceed 1000 euro. Sentence 3 shall not apply regarding goods of food and agriculture.

(2) The Certificate of Origin must be issued by an entitled body of the country of origin. The Federal Ministry for Economic Affairs and Energy shall publish a list of the entitled bodies in the Federal Gazette. If the country of dispatch is not the country of origin, the presentation of a Certificate of Origin of an entitled body of the country of dispatch shall suffice.

(3) The Declaration of Origin must be entered by the exporter or supplier on the invoice or, if an invoice cannot be presented, on another business document relating to the export. It must confirm that the goods originate within the meaning of Articles 59 to 63 of Regulation (EU) No 952/2013 in conjunction with Articles 31 to 36 of Delegated Regulation (EU) No 2015/2446 in the cited third country.

### **Section 39**

#### **Import licence**

(1) In a general instruction, to be published in the Federal Gazette, the bodies responsible for issuing import licences within the meaning of Section 13 of the Foreign Trade and Payments Act (licensing bodies) can provide information about the details to be observed in applications for the issuing of the licence (announcement). The announcement will particularly stipulate the requirements as regards form and the deadlines for applications. Only the importer shall be eligible to apply. If the licensing requirement is based on a directly

applicable act of the European Union, the import licence shall be issued on the import document prescribed in this act and shall be valid throughout the European Union.

(2) To the extent that it is permissible to use national forms for the import licence, the licensing bodies can stipulate these forms for use in Germany by means of general instruction to be published in the Federal Gazette in derogation of subsection 1 sentence 4.

(3) The licensing bodies can require that separate applications are made for certain goods or categories of goods to the extent that this is necessary for the monitoring of imports, the acceleration of the licensing procedure or the upholding of other interests protected by the Foreign Trade and Payments Act or by Union law. If separate applications are required, notice should be given in the announcement.

(4) The licensing bodies should treat applications which they receive within an appropriate deadline following the announcement as having been submitted at the same time.

(5) In the case of electronic import clearance pursuant to Section 37 subsection 1 sentence 1, the customs offices shall access the data of the import licence in the automated procedure. Section 32 subsection 1 sentence 1 no. 2 letter c shall apply *mutatis mutandis*. If the import clearance takes place on the basis of an electronic import declaration, import licences will normally be transcribed electronically by the customs offices if they are destined for use in Germany. Import licences issued in other Member States of the European Union must be presented in paper form and transcribed manually. Further details about the use of an import licence in other Member States of the European Union shall be determined in a general instruction of the Federal Office for Economic Affairs and Export Control (BAFA), which shall be published in the Federal Gazette.

(6) In the case of import clearance in paper form pursuant to Section 37 subsection 2 sentence 1, the importer must present the import licence. The customs office shall note on the import licence the quantity or the value of the cleared goods.

#### **Section 40** **Facilitated procedure for agricultural goods**

(1) The following agricultural goods may be imported without an import licence:

1. goods of Chapters 1 to 25 of the commodity classification for foreign trade statistics up to a value of 125 euro per import consignment, excluding seeds, whereby the facilitated procedure shall not apply to the import from a transit procedure, a warehousing procedure, a temporary admission procedure or inward processing or to the import of goods which are destined for trade or for another commercial use;

2. specimens and samples for relevant trading companies or processing companies of products of food and agriculture up to a value of 50 euro per import consignment, excluding seeds, whereby the distribution costs shall not be included in the assessment of the value of specimens and samples delivered free of charge; this shall also apply to specimens and samples supplied against payment to the extent that the distribution costs are itemised separately in the invoice;

3. goods which exhibitors import for immediate consumption as tasters at trade fairs or exhibitions if the value of the goods listed together in one chapter of the commodity classification for foreign trade statistics does not exceed 3000 euro per trade fair or exhibition, whereby the value of the goods of several exhibitors which are represented by the same person must be aggregated;

4. fish and other goods which Union residents extract on the high seas and in the Swiss part of Lake Untersee and the Rhine by vessels bearing the flag of a Member State of the European Union and transfer directly into the customs territory of the European Union;



5. carrier pigeons which are not imported as merchandise;
  6. animals, seeds, fertiliser, vehicles, machinery and other goods the import of which is due to the local and commercial situation in border zones or areas near the border with third countries and which are exempted from import restrictions by international treaties;
  7. products of crop cultivation, animal husbandry, horticulture and forestry of such operations divided by national borders which are cultivated from the customs territory of the European Union if these goods are exempted from the import duties within the meaning of Article 5(20) of Regulation (EU) No 952/2013.
- (2) Sections 31 to 39 shall not apply to the imports cited in subsection 1.

#### **Section 41** **Facilitated procedure for other goods**

(1) The following goods may also be imported without an import licence:

1. goods
  - a) for delivery to the foreign troops stationed in the customs territory of the European Union, to the organisations equivalent to them, to the civilian component and to the members of the aforementioned and their dependants, if freedom from duty has been granted by international treaties of the Federal Republic of Germany or the provisions of the Foreign Forces Customs Act,
  - b) from the possessions or for the personal use of the category of people cited in letter a;
2. goods of Chapters 26 to 99 of the commodity classification for foreign trade statistics up to a value of 1000 euro per import consignment, whereby the facilitated procedure shall not apply to the import from a transit procedure, a warehousing procedure, a temporary admission procedure or inward processing or to the import of goods which are destined for trade or for another commercial use;
3. specimens and samples for relevant trading companies or processing companies of products of trade and industry up to a value of 250 euro per import consignment, whereby the distribution costs shall not be included in the assessment of the value of specimens and samples delivered free of charge; this shall also apply to specimens and samples supplied against payment to the extent that the distribution costs are itemised separately in the invoice;
4. gifts up to a value of 1000 euro per import consignment;
5. goods which are made available by a non-Union resident on his own account to a Union resident to mend ships if the work done on the ship is carried out in a free zone or under customs supervision on the account of the non-Union resident;
6. used items of clothing which are not destined for trade;
7. goods which have been transferred for temporary use into a free zone or for temporary admission into the customs territory of the European Union and which can no longer be used for the original purpose, or parts thereof which accrue during the mending work in the customs territory of the European Union;
8. spare parts for imported goods which have been or are to be sent back to third countries or have been destroyed under customs supervision, and follow-up deliveries in normal commercial quantities for goods which have already been imported;

9. goods originating in the European Union or in another contracting party to the Agreement on the European Economic Area which are to be imported as compensating products following outward processing under customs law, and other compensating products following outward processing under customs law which are imported following mending, in the standard exchange procedure or following the carrying out of supplementary processing operations pursuant to Article 258 of Regulation (EU) No 952/2013;
  10. goods for use in the provision of first aid in the event of disasters;
  11. travel requisites and travel souvenirs if these goods are exempt from import duties within the meaning of Article 5(20) of Regulation (EU) No 952/2013, and goods not intended for trade up to a value of 1500 euro carried by travellers;
  12. building material, repair and operating equipment for dams, power plants, bridges, roads and other structures which are built, operated or used on both sides of the border with third countries;
  13. goods which are exempt from import duties within the meaning of Article 5(20) of Regulation (EU) No 952/2013, pursuant to
    - a) Sections 14 to 19 of the Customs Ordinance or
    - b) Title II of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (OJ L 324 of 10 December 2009, p. 23);
  14. goods in free zones which can be imported in the facilitated procedure under the preconditions and conditions under which these goods are exempt from import duties within the meaning of Article 5(20) of Regulation (EU) No 952/2013;
  15. goods which pursuant to the following provisions are exempt from import duties outside the tariff within the meaning of Article 5(20) of Regulation (EU) No 952/2013
    - a) pursuant to the accession laws of the Federal Republic of Germany to international treaties with third countries,
    - b) pursuant to ordinances of the Federal Government on the basis of Article 3 of the Act of 22 June 1954 on the accession of the Federal Republic of Germany to the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations of 21 November 1947 and on the granting of privileges and immunities to other international organisations of 22 June 1954 (Federal Law Gazette 1954 II p. 639), most recently amended by Article 4 of the Act of 16 August 1980 (Federal Law Gazette 1980 II p. 941),
    - c) pursuant to Articles 250 to 253 of Regulation (EU) No 952/2013 if the goods are temporarily used in the customs territory of the European Union with a full or partial exemption from the import duties or
    - d) pursuant to Articles 203 to 207 of Regulation (EU) No 952/2013 if the goods are imported back into the customs territory of the European Union.
- (2) Sections 31 to 39 shall not apply to the imports cited in subsection 1. Subsection 1 no. 13 shall apply *mutatis mutandis* if the goods cited there can be imported free of duty for a different reason.

## **Section 42**

### **Import of horticultural products**

(1) In the case of the import of fresh fruit and vegetables for which marketing standards have been stipulated on the basis of Regulation (EU) No 1308/2013, the Federal Agency of Agriculture and Food shall examine whether the goods correspond to these marketing standards prior to release for free circulation.

(2) In the case of the import which is not subject to a licence of fruit and vegetables for which marketing standards have been stipulated, one of the following documents shall be required for the import clearance pursuant to Article 13(1) of Regulation (EU) No 543/2011:

1. a valid certificate of conformity pursuant to Article 14(1) of Regulation (EU) No 543/2011,
2. a valid certificate of conformity of a recognised third-country inspection service pursuant to Article 14(1) of Regulation (EU) No 543/2011,
3. a communication from the competent inspection body that a conformity certificate has been issued for the relevant parties, or
4. a waiver pursuant to Section 19 subsection 1 sentence 1 no. 3.

Section 32 subsection 1 sentence 1 no. 2 letter d shall apply *mutatis mutandis*.

(3) In the case of the import which is not subject to a licence of processed fruit and vegetable products for which minimum standards have been set by the bodies of the European Union on the basis of Regulation (EU) No 1308/2013, the Federal Agency of Agriculture and Food shall examine samples prior to import clearance to establish whether these goods meet these minimum requirements.

(4) Subsection 2 shall not be applicable to the extent that the facilitated procedure pursuant to Section 40 applies to the import of the goods.

### **Section 43**

#### **Enforcement measures**

If an enforcement measure is to be undertaken on goods which are located in a free zone or a customs warehouse, the creditor can apply for a monitoring document or an import licence and the import clearance. The application for the monitoring document or the import licence must bear the mark: "Zwangsvollstreckung".

### **Chapter 4**

#### **Other movements of goods**

#### **Division 1**

##### **Transit**

### **Section 44**

#### **Restrictions on the transit of goods**

(1) The competent customs offices can in the case of a transit of goods pursuant to Article 2 no. 11 of Regulation (EU) 2021/821 suspend the release of goods until the communication of a decision by the Federal Office for Economic Affairs and Export Control (BAFA) pursuant to subsection 3 in order to prevent the goods from leaving Germany if they have grounds to suspect that the goods

1. are listed in Annex I of Regulation (EU) 2021/821 and
2. are or can be wholly or partly destined for one of the uses cited in Article 4(1) of Regulation (EC) No 428/2009.

This shall be without prejudice to the powers of the competent customs offices in accordance with Regulation (EU) No 952/2013.

(2) The competent customs office shall inform the Federal Office for Economic Affairs and Export Control (BAFA) without delay of the measures taken pursuant to subsection 1.

(3) The Federal Office for Economic Affairs and Export Control shall inform the competent customs office without delay of the decision pursuant to Article 7(1) or (2) of Regulation (EU) 2021/821.

(4) Incurred costs related to the storage of the goods for the duration of a measure pursuant to subsection 1 or Article 7(1) or (2) of Regulation (EU) 2021/821 shall be borne by the persons cited in Article 271 of Regulation (EU) No 952/2013. Articles 197 and 198 Regulation (EU) No 952/2013, in each case in conjunction with Section 13 of the Customs Administration Act, shall be applied *mutatis mutandis*.

#### **Section 45** **Transit procedure**

The admissibility of the transit shall be examined by the customs office at the point of exit when the goods exit Germany and by each customs office which is involved when the goods exit via an internal border to another Member State of the European Union. To this end, the customs office can demand further particulars and evidence, in particular the presentation of the loading papers, from the transporter of the goods or the person entitled to dispose of the goods.

#### **Division 2** **Trafficking and brokering transactions**

##### **Section 46** **Licensing requirements for trafficking and brokering transactions involving goods of** **Part I Section A of the Export List**

(1) Trafficking and brokering transactions involving goods of Part I Section A of the Export List shall be subject to a licence if

1. the goods are
  - a) located in a third country or
  - b) located in Germany and have not yet been cleared by customs and
2. the goods are to be delivered to another third country.

(2) A licence pursuant to subsection 1 shall not be required if the trafficking and brokering transaction is subject to a licence pursuant to Section 4a of the War Weapons Control Act.

##### **Section 47** **Licensing requirements for trafficking and brokering transactions in a third country**

(1) Section 46 shall also apply to trafficking and brokering transactions carried out in a third country by Germans with a residence or habitual abode in Germany if the trafficking and brokering transaction refers to the following war weapons:

1. war weapons pursuant to Part B I. no. 7 to 11, V. no. 29, 30 or 32, VI. no. 37 or 38, VIII. no. 50 or 51 of the Annex to Section 1 subsection 1 of the War Weapons Control Act (War Weapons List),
2. barrels or breech blocks for war weapons pursuant to Part B V. no. 29 or 32 of the War Weapons List,
3. ammunition or projectiles or propelling charges for ammunition for war weapons pursuant to Part B V. no. 32 or VI. no. 37 of the War Weapons List,
4. mortars with a calibre of less than 100 millimetres or

5. barrels, breech blocks, ammunition or projectiles or propelling charges for ammunition for mortars with a calibre of less than 100 millimetres.

(2) Trafficking and brokering transactions involving the goods covered by Annex I of Regulation (EU) 2021/821 shall be subject to a licence if

1. the goods are
  - a) located in a third country or
  - b) located in Germany and have not yet been cleared by customs,
2. the goods are to be delivered to another third country and
3. the German who wishes to carry out the trafficking and brokering transaction in a third country has been informed by the Federal Office for Economic Affairs and Export Control (BAFA) that these goods are or can be wholly or partly destined for one of uses of Article 4(1) of Regulation (EU) 2021/821.

(3) If a German with a residence or habitual abode in Germany who wishes to carry out a trafficking and brokering transaction in a third country is aware that the goods covered by Annex I of Regulation (EU) 2021/821 which are located in a third country or in Germany and have not yet been cleared by customs and are to be delivered from there to a further third country are wholly or partly destined for one of the uses of Article 4(1) of Regulation (EU) 2021/821, he must inform the Federal Office for Economic Affairs and Export Control (BAFA) of this. The latter shall decide whether the trafficking and brokering transaction shall be subject to a licence. The trafficking and brokering transaction must not be carried out until the Federal Office for Economic Affairs and Export Control (BAFA) has licensed the trafficking and brokering transaction or has decided that no licence is required.

#### **Section 48**

##### **Import documents for trafficking and brokering transactions**

Anyone who requires an International Import Certificate or a Delivery Verification Certificate for a trafficking and brokering transaction must apply to the Federal Office for Economic Affairs and Export Control (BAFA). Section 30 shall apply *mutatis mutandis* with the proviso that the import into the country of destination designated in the application must be documented.

#### **Chapter 5**

##### **Movement of services**

#### **Section 49**

##### **Licensing requirements for technical support relating to chemical or biological weapons or nuclear weapons**

(1) Technical support in third countries by a German or a resident shall be subject to a licence if the German or the resident has been informed by the Federal Office for Economic Affairs and Export Control (BAFA) that the technical support is destined for use in relation to

1. the development, manufacture, handling, operation, maintenance, storage, detection, identification or spread of
  - a) chemical or biological weapons or
  - b) nuclear weapons or other nuclear explosive devices or
2. the development, manufacture, maintenance or storage of missiles suited to the launching of such weapons.

(2) If a German or a resident is aware that the technical support which he wishes to provide in third countries is destined for a purpose cited in subsection 1, he must inform the Federal

Office for Economic Affairs and Export Control (BAFA) of this. The latter shall decide whether the technical support is subject to a licence. The technical support may not be provided until the Federal Office for Economic Affairs and Export Control (BAFA) has licensed the technical support or has decided that no licence is required.

(3) Subsections 1 and 2 shall not apply if the technical support

1. is provided in a country listed in Annex IIa Part 2 of Regulation (EU) 2021/821,
2. takes place via the passing on of information which is generally available or forms part of basic research within the meaning of the General Technology Note to Part I of the Export List or to Annex I of Regulation (EU) 2021/821, or
3. takes place orally and does not refer to a technology which is cited in Part I Section A no. 0022 or Part I Section B nos. of category E of the Export List.

### **Section 50**

#### **Licensing requirements for technical support relating to a military end-use**

(1) Technical support in third countries by a German or a resident which is not covered by Section 49 subsection 1 shall be subject to a licence if the German or the resident within the meaning of Section 2 subsection 15 no. 2 to 4 of the Foreign Trade and Payments Act has been informed by the Federal Office for Economic Affairs and Export Control (BAFA) that the technical support is related to a military end-use and is being provided in a country within the meaning of Article 4(1)b of Regulation (EU) 2021/821.

(2) If a German or a resident is aware that the technical support which he wishes to provide in a third country is destined for a purpose cited in subsection 1, he must inform the Federal Office for Economic Affairs and Export Control (BAFA) of this. The latter shall decide whether the technical support is subject to a licence. The technical support may not be provided until the Federal Office for Economic Affairs and Export Control (BAFA) has licensed the technical support or has decided that no licence is required.

(3) Subsections 1 and 2 shall not apply if the technical support

1. takes place via the passing on of information which is generally available or forms part of basic research within the meaning of the General Technology Note to Part I of the Export List or to Annex I of Regulation (EU) 2021/821, or
2. takes place orally and does not refer to a technology which is cited in Part I Section A no. 0022 or Part I Section B nos. of category E of the Export List.

### **Section 51**

#### **Licensing requirements for technical support in Germany**

(1) Technical support in Germany by a resident shall be subject to a licence if the resident has been informed by the Federal Office for Economic Affairs and Export Control (BAFA) that the technical support

1. is destined for use
  - a) in relation to the development, manufacture, handling, operation, maintenance, storage, detection, identification or spread of
    - aa) chemical or biological weapons or
    - bb) nuclear weapons or other nuclear explosive devices or
  - b) in relation to the development, manufacture, maintenance or storage of missiles suited to the launching of such weapons, and

2. is provided to foreigners not resident in a country that is cited in Annex IIa Part 2 of Regulation (EU) 2021/821 or that is a member of the European Union.

(2) Technical support in Germany by a resident shall be subject to a licence if the resident has been informed by the Federal Office for Economic Affairs and Export Control (BAFA) that the technical support is related to a military end-use which is not covered by subsection 1 and is being provided to foreigners resident in a country within the meaning of Article 4(1)b of Regulation (EU) 2021/821.

(3) If a resident is aware that technical support which he would like to provide in Germany is destined for a use cited in subsection 1 or 2, he must inform the Federal Office for Economic Affairs and Export Control (BAFA). The latter shall decide whether the technical support is subject to a licence. The technical support may not be provided until the Federal Office for Economic Affairs and Export Control (BAFA) has licensed the technical support or has decided that no licence is required.

(4) Subsections 1 to 3 shall not apply if the technical support

1. takes place via the passing on of information which is generally available or forms part of basic research within the meaning of the General Technology Note to Part I of the Export List or to Annex I of Regulation (EU) 2021/821, or

2. does not refer to a technology which is cited in Part I Section A no. 0022 of the Export List or Part I Section B nos. of section E of the Export List.

(5) Foreigners within the meaning of subsections 1 and 2 shall include such natural persons whose residence or habitual abode in Germany is limited to a maximum of five years.

## **Section 52**

### **Licensing requirements for technical support in relation to the construction or operation of nuclear facilities**

(1) Technical support by a German or a resident shall be subject to a licence if the German or the resident has been informed by the Federal Office for Economic Affairs and Export Control (BAFA) that the technical support is related to the construction or operation of facilities for nuclear purposes within the meaning of Category 0 of Annex I of Regulation (EU) 2021/821 in the countries cited in Section 9 subsection 1 sentence 1 no. 2.

(2) If a German or a resident is aware that the technical support which he wishes to provide in third countries is destined for a purpose cited in subsection 1, he must inform the Federal Office for Economic Affairs and Export Control (BAFA) of this. The latter shall decide whether the technical support is subject to a licence. The technical support may not be provided until the Federal Office for Economic Affairs and Export Control (BAFA) has licensed the technical support or has decided that no licence is required.

(3) Subsections 1 and 2 shall not apply if the technical support

1. takes place via the passing on of information which is generally available or forms part of basic research within the meaning of the Nuclear Technology Note to Annex I of Regulation (EU) 2021/821, or

2. does not refer to a technology cited in nos. of section E in Category 0 of Annex I of Regulation (EU) 2021/821.

(4) The procedure pursuant to this provision can be handled by a single authority pursuant to the provisions of the Administrative Procedures Act.

## **Section 52a**

### **Licensing requirements for technical support relating to certain goods of communications surveillance listed in Annex I of Regulation (EU) 2021/821**



(1) Technical support in third countries by a German or a resident shall be subject to a licence if the German or the resident has been informed by the Federal Office for Economic Affairs and Export Control (BAFA) that the technical support is destined for use in relation to the development, manufacture, handling, operation, maintenance or repair of goods of numbers 4A005, 4D004, 4E001(c), 5A001(f), 5A001(j) or 5A001(e) of Annex I of Regulation (EU) 2021/821 and for foreigners not resident in a country cited in Annex IIa Part 2 of Regulation (EU) 2021/821 or a member of the European Union.

(2) If a German or a resident is aware that the technical support which he wishes to provide is destined for a purpose cited in subsection 1, he must inform the Federal Office for Economic Affairs and Export Control (BAFA) of this. The latter shall decide whether the technical support is subject to a licence. The technical support may not be provided until the Federal Office for Economic Affairs and Export Control (BAFA) has licensed the technical support or has decided that no licence is required.

(3) Subsections 1 and 2 shall not apply if the technical support

1. is provided in a country listed in Annex IIa Part 2 of Regulation (EU) 2021/821,
2. takes place via the passing on of information which is generally available or forms part of basic research within the meaning of the General Technology Note to Annex I of Regulation (EU) 2021/821, or
3. serves to fulfil a contract concluded prior to 13 May 2015, where the provision of the technical support has already commenced; this provision shall cease to apply on 1 January 2016.

#### **Section 52b**

##### **Licensing requirements for technical support relating to certain goods of communications surveillance listed in Part I Section B of the Export List**

(1) Technical support in third countries by a German or a resident shall be subject to a licence if the German or the resident has been informed by the Federal Office for Economic Affairs and Export Control (BAFA) that the technical support is destined for use in relation to the development, manufacture, handling, operation, maintenance or repair of goods of numbers 5A902, 5D902 or 5E902 of Part 1 Section B of the Export List and for foreigners not resident in a country cited in Annex IIa Part 2 of Regulation (EU) 2021/821 or a member of the European Union.

(2) If a German or a resident is aware that the technical support which he wishes to provide is destined for a purpose cited in subsection 1, he must inform the Federal Office for Economic Affairs and Export Control (BAFA) of this. The latter shall decide whether the technical support is subject to a licence. The technical support may not be provided until the Federal Office for Economic Affairs and Export Control (BAFA) has licensed the technical support or has decided that no licence is required.

(3) Subsections 1 and 2 shall not apply if the technical support

1. is provided in a country listed in Annex IIa Part 2 of Regulation (EU) 2021/821,
2. takes place via the passing on of information which is generally available or forms part of basic research within the meaning of the General Technology Note to Part I of the Export List, or
3. serves to fulfil a contract concluded prior to 13 May 2015, where the provision of the technical support has already commenced; this provision shall cease to apply on 1 January 2016.

### **Section 53**

#### **Exemptions from the licensing requirement**

Sections 49 to 52b shall not apply in the cases of

1. in the cases of
  - a) technical support by authorities and agencies of the Federal Republic of Germany in the context of their official tasks,
  - b) technical support provided for the armed forces of a Member State of the European Union due to the tasks transferred to them,
  - c) technical support provided for a purpose which is cited in the exceptions for goods of the Missile Technology Control Regime (MTCR technology) in Annex IV of Regulation (EU) 2021/821,
  - d) technical support which represents the absolutely necessary minimum for the construction, operation, maintenance and repair of those goods for which an export licence was issued,
2. within the scope of Article 8 of Regulation (EU) 2021/821.

### **Chapter 6**

#### **Restrictions on movements of capital**

#### **Division 1**

#### **Restrictions pursuant to Section 4 subsection 2 of the Foreign Trade and Payments Act to fulfil the Agreement on German External Debts**

### **Section 54**

#### **Effecting of payments and other performances**

- (1) A debtor shall be prohibited from effecting payments and other performances if they
1. refer to the fulfilment of a debt within the meaning of the Agreement of 27 February 1953 on German External Debts (Federal Law Gazette II 1953 p. 331), but the debt is not settled,
  2. refer to the fulfilment of a settled debt within the meaning of the Agreement but do not remain within the boundaries of the stipulated payment and other conditions, or
  3. refer to the fulfilment of liabilities which
    - a) are or were payable in non-German currency and
    - b) do correspond to the preconditions of Article 4(1) and (2) of the Agreement, but do not fulfil the preconditions of Article 4(3) letter a or b of the Agreement with regard to the person of the creditor, unless these are liabilities from marketable securities which are payable in a creditor country.
- (2) The definitions of terms contained in Article 3 of the Agreement shall also apply to subsection 1.

### **Division 2**

#### **Assessment of corporate acquisitions**

#### **Subdivision 1**

#### **Cross-sectoral assessment of corporate acquisitions**

### **Section 55**

#### **Scope of application of the cross-sectoral assessment**

(1) The Federal Ministry for Economic Affairs and Energy can assess whether there will be a likely effect on the public order or security of the Federal Republic of Germany, of another Member State of the European Union or in relation 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) if a non-EU resident directly or indirectly acquires a domestic company or directly or indirectly acquires a stake within the meaning of Section 56 in a domestic company.

(1a) An acquisition within the meaning of subsection 1 also takes place when a non-EU resident acquires

1. a definable part of the operation of a domestic company or
2. all the essential operating equipment of a domestic company or of a definable part of the operation of a domestic company which is needed to maintain the operation of the company or of a definable part of the operation.

(1b) The right to undertake the assessment pursuant to subsection 1 shall not exist if a legal transaction governed by the law of obligations is concluded on the acquisition of a domestic company solely between companies whose respective shares are held in full by the same controlling company, and all contracting parties have their headquarters located in the same third country.

(2) Acquisitions, including by EU residents, shall also be subject to an assessment pursuant to subsection 1 if there are indications that an abusive approach or a transaction circumventing the law has been undertaken not least partly in order to avoid an assessment pursuant to subsection 1. Indications of an abusive approach or a transaction circumventing the law shall in particular include cases where the direct acquirer does not maintain any significant business operations of its own other than the acquisition pursuant to subsection 1 or does not have any permanent establishment of its own including offices, staff and equipment within the European Union. Subsidiaries and permanent establishments of a non-EU acquirer shall not be considered EU-resident subsidiaries or establishments. Acquirers from the member states of the European Free Trade Association shall be equivalent to EU residents. Establishments operated by the direct acquirers in a member state of the European Free Trade Association shall be equivalent to establishments operated within the European Union. Indications of an abusive approach or a transaction circumventing the law shall also exist where several acquisitions of the same domestic company are coordinated in such a manner that, when viewed separately, none of the acquisitions represents a stake within the meaning of Section 56.

(3) The Federal Ministry for Economic Affairs and Energy must announce the opening of the assessment procedure within the deadline cited in Section 14a subsection 1 number 1 of the Foreign Trade and Payments Act to the direct acquirer and the domestic company affected by the acquisition pursuant to subsection 1. The announcement pursuant to sentence 1 notification must take place in writing or electronically. The sole criterion as to whether the deadline pursuant to sentence 1 has been met shall be that the announcement has been made in time to the domestic company affected by the acquisition pursuant to subsection 1

(4) (repealed)

#### **Section 55a** **Likely effect on public order or security**

(1) The assessment of a likely effect on public order or security can in particular consider whether the domestic company

1. operates critical infrastructure within the meaning of the Act on the Federal Office for Information Security,

2. develops or manufactures critical components within the meaning of Section 2 subsection 13 of the Act on the Federal Office for Information Security or specially develops or manufactures software used on a sector-specific basis to operate critical infrastructure within the meaning of the Act on the Federal Office for Information Security,
3. is obliged to carry out organisational measures pursuant to Section 110 of the Telecommunications Act or produces or has produced in the past the technical equipment used for implementing statutory measures to monitor telecommunications and has knowledge about or other access to the technology on which the technical facilities are based,
4. provides cloud computing services and the infrastructure used for this reaches or exceeds the thresholds set out in Annex 4 Part 3 Number 2 Column D of the Ordinance to Determine Critical Infrastructures pursuant to the Act on the Federal Office for Information Security with regard to the respective cloud computing service,
5. holds a licence for providing telematics infrastructure components or services pursuant to Section 325 or Section 311 subsection 6 of Book V of the Social Code,
6. is a company of the media industry which contributes to the formation of public opinion and is characterised by particular topicality and breadth of impact,
7. provides services which are needed to ensure the trouble-free operation and functioning of state communication infrastructures within the meaning of Section 2 subsection 1 sentence 1 and 2 of the Act establishing the Federal Institute for Digital Radio of Authorities and Organisations with Security Tasks,
8. develops or manufactures personal protective equipment within the meaning of Article 3 number 1 of Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC (OJ L 81 of 31 March 2016, p. 51), to the extent that these serve to protect against risks of Category III of Annex I of Regulation (EU) 2016/425, or develops or manufactures facilities to produce non-wovens which are suitable to serve as a feedstock for respiratory masks as personal protective equipment to provide protection against harmful biological agents within the meaning of Category III of Annex I of Regulation (EU) 2016/425 or for medical face masks pursuant to DIN EN 14683 "Medical face masks - Requirements and test methods; German version EN 14683:2019+AC:2019", October 2019 edition,
9. develops, manufactures or markets essential medicines, including their precursors and active ingredients, within the meaning of Section 2 subsection 1 of the Medicinal Products Act to ensure the provision of healthcare to the population, or possesses a corresponding licence under pharmaceuticals law,
10. develops or manufactures medical devices within the meaning of the law on medical devices which are intended for diagnosis, prevention, monitoring, predicting, forecasting, treating or alleviating of life-threatening and highly infectious diseases,
11. develops or manufactures *in vitro* diagnostics within the meaning of the law on medical devices which serve to supply information about physiological or pathological processes or conditions or to stipulate or monitor therapeutic measures relating to life-threatening and highly infectious diseases,
12. operates a sophisticated earth remote sensing system within the meaning of Section 2 subsection 1 number 4 of the Satellite Data Security Act,

13. develops or manufactures goods which use artificial intelligence processes to solve specific problems of application and are capable of independently optimising their algorithms and which can be used automatically
- a) to carry out cyber attacks,
  - b) to imitate people in order to disseminate targeted disinformation,
  - c) as a means to evaluate voice communications or to remotely and biometrically identify people for the purpose of surveillance which, viewed objectively, is also suitable for use for internal repression, or
  - d) to analyse data on movement, location, traffic or events regarding people for the purpose of surveillance which, viewed objectively, is also suitable for internal repression,
14. develops or manufactures motor vehicles or unmanned aircraft which have technical equipment to control automated or autonomous driving or navigation functions or the essential components for the control of such driving or navigation functions or software necessary for this,
15. is a developer or manufacturer of robots, including automated or autonomously mobile robots, with the following characteristics:
- a) specially designed for the handling of highly explosive materials,
  - b) specially designed or configured as radiation-hardened in order to withstand a radiation dose of more than  $5 \times 10^3$  Gy (silicon) without loss of function,
  - c) specially designed for operational capability at heights of more than 30,000 metres or
  - d) specially designed for operational capability at underwater depths from 200 metres,
16. is a developer, manufacturer or processor of
- a) micro- or nano-electronic non-optical switches (integrated switches) on a substrate and discrete semiconductors,
  - b) micro- or nano-structured optical switches on a substrate and discrete optical construction elements or
  - c) manufacturing or processing tools, here in particular crystal growing, photolithographic, mask-manufacturing, fibre draw or coating facilities, and grinding, etching, doping or cutting equipment or clean-room transport facilities, testing tools and masks for goods within the meaning of letters a or b.
17. with a view to sale to third parties develops or manufactures IT products or essential components of such products whose main functional characteristic serves
- a) to protect availability, integrity, authenticity or confidentiality of IT systems, components or processes,
  - b) to avert attacks on IT systems including the related damage analysis and restoration of affected IT systems or
  - c) the IT-based investigation of crimes and the preservation of evidence by prosecution authorities,

18. operates an aviation company with an operating licence within the meaning of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293 of 31 October 2008, p. 3) or develops or manufactures goods of subcategories 7A, 7B, 7D, 7E, 9A, 9B, 9D or 9E of Annex I of Regulation (EU) 2021/821 or goods or technologies intended for use in space or for deployment in space infrastructure systems,
19. develops, manufactures, modifies or uses goods of category 0 or list positions 1B225, 1B226, 1B228, 1B231, 1B232, 1B233 or 1B235 of Annex I of Regulation (EU) 2021/821,
20. is a developer or manufacturer of goods and essential components of
- a) quantum computer science, especially quantum computers and quantum simulation,
  - b) quantum communications, especially quantum cryptography, or
  - c) quantum-based measurement technology, especially quantum sensors and goods of quantum metrology,
21. is a developer or manufacturer of
- a) goods with which components of metallic or ceramic materials for industrial applications are manufactured by means of additive manufacturing processes, here in particular powder-based manufacturing processes which have an inert gas atmosphere and use a laser or an electron beam as an energy source,
  - b) essential components of the goods cited under letter a or
  - c) powder material which is processed by the manufacturing processes cited under letter a,
22. develops or manufactures goods which specifically serve the operation of wireless or wired data networks, especially wired or lightwave-connected transmission technologies, network coupling elements, signal amplifiers, network surveillance, network management and network control products for this,
23. is a manufacturer of a
- a) smart meter gateway within the meaning of Section 2 sentence 1 number 19 of the Metering Point Operation Act which has been certified by the Federal Office for Information Security pursuant to Section 19 subsection 3 in conjunction with Section 24 of the Metering Point Operation Act or is undergoing a certification procedure, or
  - b) security module for smart meter gateways which has been certified to document the technical security requirements pursuant to Section 22 subsection 1 and 2 of the Metering Point Operation Act by the Federal Office for Information Security or which is undergoing a certification procedure,
24. employs persons who are working in vital facilities pursuant to Sections 5a, 5b or Section 9a of the Ordinance Identifying the Areas in Public Agencies and Private Entities Relevant for Federal Security Checks in security-sensitive positions within the meaning of Section 1 subsection 5 sentence 3 of the Security Clearance Check Act,
25. extracts, processes or refines raw materials or their ores which have been stipulated in the annex of a communication from the European Commission as part of the Commission's raw materials initiative as a list of critical raw materials and which the Federal Ministry for Economic Affairs and Energy has announced in the Federal Gazette,

26. develops or manufactures goods covered by a patent rendered secret pursuant to Section 50 of the Patent Act or a utility-model patent rendered secret pursuant to Section 9 of the Utility Models Act, or

27. directly or indirectly cultivates an agricultural area of more than 10,000 hectares.

(2) Sector-specific software within the meaning of subsection 1 number 2 shall be:

1. in the energy sector: software for controlling power plants, grids or the operation of facilities or systems used to supply electricity, gas, fuel, fuel oil or district heat,

2. in the water sector: software for managing, controlling and automating freshwater supply or waste water facilities,

3. in the information technology and telecommunications sector: software for operating facilities or systems used in voice and data transmission or in data storage and processing,

4. in the financial and insurance sector: software for operating facilities or systems used in cash supply, card-based payments, conventional transactions, for settling and managing securities and derivative transactions or for providing insurance services,

5. in the healthcare sector: software for operating hospital information systems, for operating facilities and systems used in the selling of prescription drugs and for operating a laboratory information system,

6. in the transport sector: software for operating facilities or systems used in the transport of passengers or goods by air, rail, maritime or inland waterway vessels, road, public transport or in logistics,

7. in the food industry: software for operating facilities or systems used in supplying food.

(3) The assessment of a likely effect on public order or security can also consider whether

1. the acquirer is directly or indirectly controlled by the government, including other state agencies or armed forces, of a third country,

2. the acquirer has already been involved in activities which have had undesirable effects on the public order or security of the Federal Republic of Germany or of another Member State of the European Union, or

3. there is a significant risk that the acquirer or the persons acting for him have been or are involved in activities which in Germany would amount to

a) a crime described in Section 123 subsection 1 of the Act against Restraints of Competition, or

b) a crime or administrative offence pursuant to the Foreign Trade and Payments Act or the War Weapons Control Act.

Control within the meaning of sentence 1 number 1 can in particular be exercised on the basis of the ownership structure or in the form of financing provided by the government, including other state agencies or armed forces of a third country, which extends beyond a minor degree.

(4) The conclusion of a contract governed by the law of obligations on the acquisition of a domestic company designated in subsection 1 sentence 2 number 1 to 27 or a direct or indirect holding within the meaning of Section 56 subsection 1 or subsection 2, in each case also in conjunction with subsection 4 sentence 1 or 2, in a domestic company within the meaning of subsection 1 number 1 to 27 by a non-EU citizen must be reported to the Federal



Ministry for Economic Affairs and Energy in writing or electronically subject to the proviso of sentence 2 without delay following the conclusion of the contract governed by the law of obligations. In the case of an offer within the meaning of the Securities Acquisition and Takeover Act, the report must take place without delay following the publication of the decision to submit the offer. Acquisitions pursuant to Section 56 subsection 3 shall not be covered by the reporting requirement pursuant to sentence 1. The report shall cite in particular the acquisition, the acquirer and the domestic company to be acquired and the shareholding structures of the acquirer and describe the main features of the fields of business in which the acquirer and the domestic company to be acquired are active. In the cases of Section 56 subsection 4 sentence 1 number 2, 1st half-sentence and sentence 2, the agreement on voting rights must also be cited. The Federal Ministry for Economic Affairs and Energy shall determine by general administrative act further information and documents to be cited in the report, including the personal data required for the assessment, and the form of the report. The general administrative act shall be announced in the Federal Gazette.

(5) The direct acquirer shall also be required to make the report pursuant to subsection 4 even if that person does not fulfil the preconditions of Section 55 subsection 1.

### **Section 56** **Voting rights**

(1) Following the acquisition of his stake, the direct or indirect voting rights of the acquirer in the domestic company must amount to or exceed

1. 10 percent of the voting rights in a company cited in Section 55a subsection 1 number 1 to 7,
2. 20 percent of the voting rights in a company cited in Section 55a subsection 1 number 8 to 27 or
3. 25 percent of the voting rights in another company.

(2) Subsection 1 shall be applied *mutatis mutandis* in the case of an acquisition of further voting rights if prior to the acquisition the direct or indirect voting rights of the acquirer in the domestic company amount to or exceed a share of voting rights within the meaning of subsection 1 and as a result of the further acquisition the total share of voting rights of the acquirer amounts to or exceeds

1. in cases of subsection 1 number 1 a share of 20, 25, 40, 50 or 75
2. in cases of subsection 1 number 2 a share of 25, 40, 50 or 75 or
3. in cases of subsection 1 number 3 a share of 40, 50 or 75

percent of the voting rights.

(3) In the case of an indirect investment, the proportion of voting rights of the acquirer in the dom Subsections 1 and 2 must be applied *mutatis mutandis* if a non-EU citizen obtains an effective stake in the control of the domestic company in another way. This is the case if an acquisition of voting rights by a non-EU citizen entails

1. the assurance of additional seats or majorities in supervisory bodies or the management,
2. the granting of veto rights in the case of strategic business or personnel decisions or
3. the granting of rights to information within the meaning of Section 15 subsection 4 sentence 1 number 3 of the Foreign Trade and Payments Act,

which extend beyond the influence imparted by the share of voting rights in a manner that thereby or together with the voting rights makes possible a participation in the control of the domestic company which corresponds to the relevant share of voting rights within the meaning of subsection 1.

(4) As voting rights are being calculated, the voting rights of third parties in the domestic company shall be fully attributed to the acquirer at the relevant point in time pursuant to subsection 1,

1. in which the acquirer, following the acquisition of his stake, in each case also in conjunction with subsections 2 or 3, holds

- a) in a case of subsection 1 number 1 at least the share cited there,
- b) in a case of subsection 1 number 2 at least the share cited there, or
- c) in a case of subsection 1 number 3 the share cited there

of the voting rights or

2. the acquirer has concluded an agreement on the joint exercise of voting rights or if in view of the other circumstances of the acquisition it can be assumed that voting rights will be jointly exercised.

Sentence 1 shall be applied *mutatis mutandis* if the acquirer subsequently concludes an agreement within the meaning of sentence 1 number 2 without this entailing an acquisition of further voting rights in the domestic company. Other circumstances of the acquisition within the meaning of sentence 1 number 2 shall be assumed to exist if the acquirer and at least one third party from the same third country which has a direct or indirect stake in the domestic company at the relevant point of time pursuant to subsection 1 fulfils the preconditions of Section 55a subsection 3 sentence 1 number 1. Section 55a subsection 3 sentence 2 shall apply *mutatis mutandis*.

(5) In the case of an indirect stake, the proportion of voting rights of the acquirer in the domestic company following the acquisition of his stake shall amount to

- 1. in a case of subsection 1 number 1 at least the share cited there or
- 2. in a case of subsection 1 number 2 at least the share cited there,

in each case also in conjunction with subsections 2 and 3 if the acquirer and the respective intermediate shareholder given corresponding application of subsection 4 hold at least one of the relevant shares of voting rights pursuant to subsection 1 number 1, 2 or 3 in the respective subsidiary.

## **Section 57 (repealed)**

## **Section 58 Certificate of non-objection**

(1) In response to a written or electronic application, the Federal Ministry for Economic Affairs and Energy shall certify that it does not object to an acquisition within the meaning of Section 55 if there is no objection to the acquisition in terms of public order or security of the Federal Republic of Germany, of another Member State of the European Union, or in relation to projects or programmes of Union interest within the meaning of Article 8 of Regulation (EU) 2019/452 (certificate of non-objection). The application shall cite in particular the acquisition, the acquirer and the domestic company to be acquired and the shareholding structures of the acquirer and describe the main features of the fields of business in which the acquirer and the domestic company to be acquired are active. The Federal Ministry for Economic Affairs and Energy shall determine by general administrative act further

information and documents to be cited in the application, including the personal data required for the assessment, and the form of the application. The general administrative act shall be announced in the Federal Gazette.

(2) The certificate of non-objection shall be deemed to have been issued if the Federal Ministry for Economic Affairs and Energy does not launch an assessment procedure in accordance with Section 55 within the deadline cited in Section 14a subsection 1 number 1 of the Foreign Trade and Payments Act. Section 55 subsection 3 sentence 1 and 2 shall be applied to the implementation of the assessment procedure with the proviso that the announcement only has to be made to the applicant pursuant to subsection 1 sentence 1; Section 55 subsection 3 sentence 3 shall not be applied.

(3) Subsections 1 and 2 shall not apply if an assessment procedure pursuant to Section 55 subsection 3 has been launched or an obligation to make a report pursuant to Section 55a subsection 4 sentence 1 exists.

#### **Section 58a** **Clearance of an acquisition pursuant to Section 55**

(1) The Federal Ministry of Economic Affairs and Energy shall clear the acquisition in writing or electronically if the acquisition does not raise any concerns regarding the public order or security of the Federal Republic of Germany, of another Member State of the European Union or in relation to projects or programmes of Union interest within the meaning of Article 8 of Regulation (EU) 2019/452 and the issuing of a certificate of non-objection pursuant to Section 58 subsection 3 is excluded. The clearance shall be issued in the case of acquisitions within the meaning of Section 55a subsection 1 number 1 to 27 to the person required to make the report pursuant to Section 55a subsection 5, in all other cases to the person to whom the launch of the assessment procedure is to be announced pursuant to Section 55 subsection 3 sentence 1.

(2) The clearance shall be deemed to have been issued if, on the basis of a report pursuant to Section 55a subsection 4 the assessment procedure pursuant to Section 55 is not launched within the deadline cited in Section 14a subsection 1 number 1, also in conjunction with subsection 3 sentence 1, of the Foreign Trade and Payments Act, or if the powers pursuant to Section 59 subsection 1 and 3 are not exercised in an assessment procedure launched pursuant to Section 55 subsection 3 and the deadlines cited in Section 14 subsection 1 number 2, also in conjunction with its subsections 6 and 7, of the Foreign Trade and Payments Act have expired.

(3) A clearance can be issued subject to the condition that the Federal Ministry for Economic Affairs and Energy must be notified of the acquisition of further voting rights even below the thresholds cited in Section 56 subsection 2 for the purpose of assessment pursuant to Section 55 subsection 1 without delay following the conclusion of the legal transaction governed by the law of obligations. This shall be without prejudice to Section 14 subsection 1 sentence 1 of the Energy Industry Act.

#### **Section 59** **Prohibition or instructions**

(1) The Federal Ministry for Economic Affairs and Energy can prohibit the direct acquirer from making an acquisition within the meaning of Section 55 until the end of the deadline cited in Section 14a subsection 1 number 2, also in conjunction with its subsections 6 and 7, of the Foreign Trade and Payments Act, or issue instructions to the parties involved in the acquisition and the companies affiliated to them in order to uphold essential security interests of the Federal Republic of Germany, of another Member State of the European Union or in relation to projects or programmes of Union interest within the meaning of Article 8 of Regulation (EU) 2019/452.

(2) (repealed)

(3) In order to enforce a prohibition, the Federal Ministry for Economic Affairs and Energy can in particular

1. prohibit or restrict the exercise of voting rights in the acquired company which belong to a non-EU acquirer or are to be attributed to it, or
2. appoint a trustee to bring about the unwinding of a completed acquisition at the expense of the acquirer.

(4) A person can be commissioned as a third party, pursuant to Section 23 subsection 6b sentence 1 of the Foreign Trade and Payments Act, to monitor imposed or contractually undertaken obligations if they have expertise, are reliable and are independent of the party subject to the obligation and the other parties involved in the acquisition. An expert shall be a person who, on the basis of their training, their vocational qualification or their proven professional experience or a combination of these disposes of the necessary knowledge and abilities to exercise in an expert and appropriate manner the monitoring activity transferred to them in line with all relevant legal provisions and standards and, where the monitoring covers technical or scientific processes or requirements, taking account of the recognised principles of science and technology.

(5) In the cases of subsection 1, the Federal Ministry for Economic Affairs and Energy can also instruct that the parties involved in an acquisition and the companies affiliated to them must supply the Federal Ministry for Economic Affairs and Energy at certain intervals with a written or electronic report on the adherence to imposed or contractually undertaken obligations. The report must be produced by a person who is expert within the meaning of subsection 4 sentence 2 and is independent of the party subject to the obligation and the other parties involved in the acquisition. The parties subject to the obligation shall bear the costs of the report.

#### **Section 59a**

##### **Exemptions from the enforcement restrictions pursuant to Section 15 subsection 3 of the Foreign Trade and Payments Act**

(1) Section 15 subsection 3 sentence 1 of the Foreign Trade and Payments Act shall not prevent the execution of 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, as long as the report pursuant to Section 55a subsection 4 sentence 1 is made without delay.

(2) The acquirer shall be prohibited from exercising the voting rights he has obtained via the acquisition until a decision within the meaning of Section 15 subsection 3 sentence 2 of the Foreign Trade and Payments Act has been taken or until the point in time cited there. The acquirer must also ensure that the voting rights obtained via the acquisition are not exercised until the points in time cited in sentence 1 on his behalf or on the basis of instructions issued by him.

(3) The release or other disclosure of company-related information within the meaning of Section 15 subsection 4 sentence 1 number 3 or 4 of the Foreign Trade and Payments Act directly or indirectly to the acquirer shall be prohibited until a decision within the meaning of Section 15 subsection 3 sentence 2 of the Foreign Trade and Payments Act has been taken or until the point in time cited there.

(4) In the event that an acquisition within the meaning of subsection 1 is prohibited, the Federal Ministry for Economic Affairs and Energy can instruct the parties to the acquisition to rescind the acquisition. In particular, ordinances can be issued stating that

1. securities which have been acquired on the basis of legal transactions within the meaning of subsection 1 must within a certain period be sold again via the stock exchange or transferred to a trustee,
2. the exercise of voting rights is prohibited until the time at which the acquisition has been finally rescinded.

**Subdivision 2**  
**Sector-specific assessment of corporate acquisitions**

**Section 60**  
**Scope of application of the sector-specific assessment**

(1) The Federal Ministry for Economic Affairs and Energy can assess whether the acquisition of a domestic company or the direct or indirect acquisition within the meaning of Section 60a of a stake in a domestic company by a foreigner is likely to impair essential security interests of the Federal Republic of Germany in cases where the domestic company:

1. develops, manufactures, modifies or actually disposes of goods within the meaning of Part I Section A of the Export List,
2. develops, manufactures, modifies or actually disposes of defence-technology goods covered by a patent rendered secret pursuant to Section 50 of the Patent Act or a utility-model patent rendered secret pursuant to Section 9 of the Utility Models Act,
3. in the case of products with IT security functions to process classified state material or components essential to the IT security function of such products
  - a) manufactures or
  - b) or has manufactured such products and still disposes of the underlying technology

and the company's products or in the case of essential components for the IT security function the overall product have been licensed by the Federal Office for Information Security or

4. a facility which is vital to defence within the meaning of Section 1 subsection 5 sentence 2 number 1 of the Security Clearance Check Act.

In the cases of sentence 1 number 1 and 2, this shall also apply for companies which have developed, manufactured, modified or actually disposed of the respectively named goods in the past and still dispose of knowledge or other access to the technology on which such goods are based.

(1a) An acquisition within the meaning of subsection 1 sentence 1 also takes place when a foreign national acquires

1. a definable part of the operation of a domestic company or
2. all the essential operating equipment of a domestic company or of a definable part of the operation of a domestic company which is needed to maintain the operation of the company or of a definable part of the operation.

(1b) The investigation into a likely impairment to essential security interests pursuant to subsection 1 sentence 1 can also in particular consider whether

1. the acquirer is directly or indirectly controlled by the government, including other state agencies or armed forces, of a third country,

2. the acquirer has already been involved in activities which have had undesirable effects on the public order or security of the Federal Republic of Germany or of another Member State of the European Union, or
3. there is a significant risk that the acquirer or the persons acting for him have been or are involved in activities which in Germany would amount to
  - a) a crime described in Section 123 subsection 1 of the Act against Restraints of Competition, or
  - b) a crime or administrative offence pursuant to the Foreign Trade and Payments Act or the War Weapons Control Act.

Control within the meaning of sentence 1 number 1 can in particular be exercised on the basis of the ownership structure or in the form of financing provided by the government, including other state agencies or armed forces of a third country, which extends beyond a minor degree.

(2) Acquisitions, including by residents, shall also be subject to an assessment pursuant to subsection 1 if there are indications that an abusive approach or a transaction circumventing the law has been undertaken, not least partly in order to avoid an assessment pursuant to subsection 1. Indications of an abusive approach or a transaction circumventing the law within the meaning of sentence 1 shall in particular exist where the direct acquirer does not maintain any significant business operations of his own other than the acquisition pursuant to subsection 1 or does not have any permanent establishment of his own including offices, staff and equipment in Germany. Subsidiaries and permanent establishments of a foreign acquirer shall not be considered domestic subsidiaries or establishments. Indications of an abusive approach or a transaction circumventing the law shall also exist where several acquisitions of the same domestic company are coordinated in such a manner that, when viewed separately, none of the acquisitions represents a stake within the meaning of Section 60a.

(3) Acquisitions must be reported in writing or electronically to the Federal Ministry for Economic Affairs and Energy, subject to the proviso of sentence 2 without delay following the conclusion of the contract governed by the law of obligations. In the case of an offer within the meaning of the Securities Acquisition and Takeover Act, the report must take place without delay following the publication of the decision to submit the offer. The report shall cite in particular the acquisition, the acquirer and the domestic company to be acquired and the shareholding structures of the acquirer and describe the main features of the fields of business in which the acquirer and the domestic company to be acquired are active. In the cases of Section 60a subsection 2 in conjunction with Section 56 subsection 4 sentence 1 number 2, 1st half-sentence and sentence 2, the agreement on voting rights must also be cited. The Federal Ministry for Economic Affairs and Energy shall determine by general administrative act further information and documents to be cited in the report, including the personal data required for the assessment, and the form of the report. The general administrative act shall be announced in the Federal Gazette. The report must be made solely by the direct acquirer, even if this person does not fulfil the preconditions of subsection 1.

(4) The Federal Ministry for Economic Affairs and Energy must make an announcement to the direct acquirer and the domestic company affected by the acquisition pursuant to subsection 1 about the opening of the assessment procedure within the deadline cited in Section 14a subsection 1 number 1 of the Foreign Trade and Payments Act. Section 55 subsection 3 sentence 2 to 4 shall apply *mutatis mutandis*.

#### **Section 60a** **Voting rights**



(1) Following the acquisition of his stake, the acquirer of the domestic company must directly or indirectly control 10 per cent or more of the voting rights.

(2) Section 56 subsection 2 to 5 shall apply *mutatis mutandis* with the proviso that the basis for this shall be an acquisition by a foreigner and the share of voting rights pursuant to subsection 1.

### **Section 61** **Clearance of an acquisition pursuant to Section 60**

The Federal Ministry for Economic Affairs and Energy shall issue a clearance of the acquisition in writing or electronically to the person required to report the acquisition pursuant to Section 60 subsection 3 sentence 7 if there are no objections to the acquisition in terms of essential security interests of the Federal Republic of Germany. The clearance shall be deemed to have been issued if the Federal Ministry for Economic Affairs and Energy does not launch an assessment procedure in accordance with Section 60 subsection 1 with regard to the person required to report the acquisition within the deadline cited in Section 14a subsection 1 number 1, also in conjunction with subsection 3 sentence 1, of the Foreign Trade and Payments Act. Section 58a subsection 3 shall apply *mutatis mutandis* with the proviso that Section 60 subsection 1 takes the place of Section 55 subsection 1.

### **Section 62** **Prohibition or instructions**

(1) The Federal Ministry for Economic Affairs and Energy can prohibit the person required to report the acquisition from making an acquisition within the meaning of Section 60 until the end of the deadline cited in Section 14a subsection 1 number 2, also in conjunction with subsections 6 and 7, of the Foreign Trade and Payments Act, or issue instructions to the parties involved in the acquisition and the companies affiliated to them in order to uphold essential security interests of the Federal Republic of Germany.

(2) Section 59 subsection 3 to 5 and Section 59a shall apply *mutatis mutandis*.

### **Subdivision 3** **Cross-procedural provisions**

#### **Section 62a** **Procedural switch in the assessment procedure**

To the extent that it transpires in an assessment procedure pursuant to Section 55 subsection 1 or Section 60 subsection 1 sentence 1 that the preconditions for a prohibition or the issuance of instructions within the meaning of the provisions governing the other respective procedure may exist, the Federal Ministry for Economic Affairs and Energy can continue the respective assessment procedure on the basis of the preconditions of the provisions of the other procedure. With regard to the application of Section 14a of the Foreign Trade and Payments Act, the previous procedural actions shall remain in force for the other procedure. The procedural switch must be announced without delay in writing or electronically to the direct acquirer, the seller and the domestic company.

## **Chapter 7** **Reporting requirements for movements of capital and payments**

### **Division 1** **Definition of terms**

#### **Section 63** **Definition of terms**

For the purpose of reports pursuant to this Chapter,



1. Germany shall be the German economic territory within the meaning of Chapter 2 no. 2.05 of Annex A of Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community (OJ L 310 of 30 November 1996, p. 1), most recently amended by Regulation (EU) No 715/2010 (OJ L 210 of 11 August 2010, p. 1),

2. residents shall be every institutional unit in Germany within the meaning of Chapter 2 no. 2.12 and 2.13 in conjunction with no. 2.07 of Annex A of Regulation (EC) No 2223/96 and

3. foreigners shall be every institutional unit abroad within the meaning of Chapter 2 no. 2.12 and 2.13 in conjunction with no. 2.07 of Annex A of Regulation (EC) No 2223/96.

Foreigners within the meaning of this Chapter shall include companies, branches, permanent establishments and banks headquartered abroad.

## **Division 2**

### **Reporting rules for capital movements**

#### **Section 64**

#### **Reporting of assets of German residents abroad**

(1) The person required to make the report pursuant to subsection 6 must report to the Deutsche Bundesbank within the deadline set by Section 71 subsection 1 of the status and selected items of the composition of the following assets abroad pursuant to subsection 4 or subsection 5:

1. the assets of a foreign company if at least 10 percent of the shares or the voting rights are to be attributed to the resident,
2. the assets of a foreign company if more than 50 percent of the shares or the voting rights in this company are to be attributed to one or several foreign companies dependent on the resident solely or jointly with the resident, and
3. assets ascribed to foreign branches and permanent establishments of a domestic company, and the assets which are ascribed to foreign branches and permanent establishments of a foreign company which fulfils the conditions pursuant to no. 2.

(2) A foreign company shall be deemed dependent on a resident within the meaning of subsection 1 no. 2 if more than 50 percent of the shares or voting rights in the foreign company are to be attributed to the resident. If more than 50 percent of the shares or voting rights in another foreign company are to be attributed to one or several foreign companies dependent on a resident or to this company together with the resident, the other foreign company and under the same preconditions each additional company within the meaning of subsection 1 no. 2 shall be regarded as being dependent on a resident.

(3) The reporting requirement pursuant to subsection 1 shall not apply

1. if the total balance sheet of the foreign company in which the resident or another foreign company dependent on the resident is participating does not exceed 3 million euro,
2. if the business assets which are ascribed to the foreign branch or permanent establishment pursuant to subsection 1 no. 3 do not exceed 3 million euro, or
3. to the extent that for actual or legal reasons the resident is unable to access documents which he needs to meet his reporting requirement.

(4) The reports must be made on the basis of the status on the balance sheet date of the person required to submit the report or, if the person required to submit the report does not produce accounts, on the basis of the status on 31 December, whereby the report must contain the particulars in accordance with Annex K3 “Assets of German residents abroad”.

(5) If the balance sheet date of a foreign company in which the person required to submit the report or another foreign company dependent on him participates does not coincide with the balance sheet date of the person required to submit the report, the report of the assets in accordance with Annex K3 must be made in line with the balance on the balance sheet date immediately preceding that of the person required to submit the report. If the person required to submit the report does not produce accounts and the balance sheet date of a foreign company in which the person required to submit the report or another foreign company dependent on him participates does not coincide with 31 December, the report of the assets in accordance with Annex K3 must be made in line with the balance on the balance sheet date immediately preceding 31 December.

(6) The person required to submit the report shall be the resident to whom the assets are attributed directly or via a dependent foreign company on the balance sheet date of the resident or, if he does not produce accounts, on 31 December.

#### **Section 65** **Reporting of assets of foreigners in Germany**

(1) The person required to make the report pursuant to subsection 6 must report to the Deutsche Bundesbank within the deadline set by Section 71 subsection 2 on the status and selected items of the composition of the following assets in Germany pursuant to subsection 5:

1. the assets of a domestic company if at least 10 percent of the shares or voting rights in the domestic company are to be attributed to a foreigner or to several commercially associated foreigners together,
2. the assets of a domestic company if more than 50 percent of the shares or voting rights in this company are to be attributed to a foreigner or to a domestic company dependent on several commercially associated foreigners, and
3. assets ascribed to domestic branches and permanent establishments of a foreign company, and the assets which are ascribed to domestic branches and permanent establishments of a domestic company which fulfils the conditions pursuant to no. 2.

(2) Foreigners shall be deemed to be commercially associated if they pursue common commercial interests. This shall also be the case if they pursue common commercial interests together with residents. Such commercially associated foreigners shall especially include:

1. natural and legal foreign persons who have joined in order to establish or acquire a domestic company, to acquire participations in such a company, or to jointly exercise their shareholders' rights in such a company,
2. natural and legal foreign persons who pursue common commercial interests by possessing participations in one or several companies,
3. natural foreign persons who are married to each other, live in a civil union, or are directly related or related by marriage or associated by adoption or related in the collateral line to the third degree or by marriage to the second degree, and
4. legal foreign persons who are associated within the meaning of Section 15 of the Stock Corporation Act.

(3) A domestic company shall be deemed dependent on a foreigner or on several commercially associated foreigners within the meaning of subsection 1 no. 2 if more than 50 percent of the shares or voting rights in the domestic company are to be attributed to the foreigner or commonly to several commercially associated foreigners. If more than 50 percent of the shares or voting rights in another domestic company are to be attributed to a domestic company dependent on a foreigner or on several commercially associated foreigners solely or jointly with one or several other domestic companies dependent on this domestic company, the other domestic company and under the same preconditions each additional company within the meaning of subsection 1 no. 2 shall also be regarded as being dependent on a foreigner or on several commercially associated foreigners.

(4) The reporting requirement pursuant to subsection 1 shall not apply

1. if the total balance sheet of the domestic company in which the foreigner, the commercially associated foreigners or another domestic company dependent on the foreigner or on the commercially associated foreigners participate does not exceed 3 million euro,
2. if the business assets which are ascribed to the domestic branch or permanent establishment pursuant to subsection 1 no. 3 do not exceed 3 million euro,
3. to the extent that for actual or legal reasons the resident is unable to access documents which he needs to meet his reporting requirement, or
4. if the domestic or the dependent domestic company in which commercially associated foreigners participate cannot perceive that the foreigners are commercially associated foreigners within the meaning of subsection 2.

(5) The reports must be made on the basis of the balance sheet date of the person required to submit the report or, if the person required to submit the report is a non-accounting domestic branch or permanent establishment of a foreign company, on the basis of the balance sheet date of the foreign company, whereby the report must contain the particulars in accordance Annex K4 "Assets of foreigners in Germany".

(6) The person required to submit the report shall be

1. in the case of subsection 1 no. 1 the domestic company,
2. in the case of subsection 1 no. 2 the dependent domestic company,
3. in the case of subsection 1 no. 3 the domestic branch or permanent establishment.

## **Section 66**

### **Reporting of claims and liabilities**

(1) Residents, excluding natural persons, monetary financial institutions pursuant to Article 1 first indent of Regulation (EC) No 25/2009 of the European Central Bank of 19 December 2008 on the balance sheet of the monetary financial institutions sector (OJ L 15 of 20 January 2009, p. 14), most recently amended by Regulation (EU) No 883/2011 (OJ L 228 of 3 September 2011, p. 13), and investment stock corporations and capital management companies regarding the claims and liabilities of their investment funds, must report their claims and liabilities with regard to foreigners to the Deutsche Bundesbank pursuant to subsections 2 and 3 within the deadlines of Section 71 subsection 3 and 4 if the respective aggregate sums of these claims or liabilities total more than 5 million euro at the end of a month.

(2) The claims and liabilities with respect to foreign banks to be reported must contain the particulars pursuant to Annex Z5 "Claims and liabilities from financial relationships with foreign banks".

(3) The claims and liabilities with respect to foreign non-banks to be reported must contain the particulars in accordance with Annex Z5a sheet 1/1 "Claims and liabilities from financial relationships with associated foreign non-banks", Annex Z5a sheet 1/2 "Claims and liabilities from financial relationships with other foreign non-banks", Annex Z5a sheet 2/1 "Claims and liabilities with respect to associated foreign non-banks from movements of goods and services" and Annex Z5a sheet 2/2 "Claims and liabilities with respect to other foreign non-banks from movements of goods and services".

(4) Residents who are subject to reporting requirements pursuant to subsection 1 and whose claims or liabilities from financial relationships with foreigners amount to more than 500 million euro at the end of a quarter must report their claims and liabilities with respect to foreigners from derivative financial instruments on the basis of the status at the end of the quarter within the deadline of Section 71 subsection 5, whereby the report must contain the particulars in accordance with Annex Z5b "Claims and liabilities with respect to foreigners from derivative financial instruments". The amounts shall in principle be assessed at their fair value.

(5) If a resident who was required to submit a report for a previous reporting date is no longer subject to the reporting requirement because he falls below the thresholds cited in subsections 1 and 4, he must give notification of this in written or electronic form.

### **Division 3** **Reporting of payments**

#### **Section 67** **Reporting of payments**

(1) Residents shall report payments pursuant to subsection 4 to the Deutsche Bundesbank within the deadlines of Section 71 subsection 7 and 8 which they

1. receive from foreigners or from residents for account of a foreigner (incoming payments) or
2. make to foreigners or to residents for account of a foreigner (outgoing payments).

(2) Reports shall not be made for

1. payments which do not exceed the amount of 12,500 euro or the equivalent value in other currency,
2. payments for the import, export or transfer of goods and
3. payments for the granting, receipt or repayment of loans, including the justification and repayment of credit balances, with an originally agreed term or termination deadline of not more than twelve months.

(3) Payments within the meaning of this subdivision shall include netting and offsetting and payments handled by direct debit. Payment shall further include the bringing in of objects and rights into companies, branches and permanent establishments.

(4) The reports of incoming and outgoing payments must include the particulars in accordance with Annex Z4 "Payments in foreign trade and payments transactions". In the case of payments related to securities transactions and financial derivatives, the reports must contain the particulars in accordance with Annex Z10 "Securities transactions and financial derivatives in foreign trade and payments transactions".

(5) The reports must contain meaningful particulars of the underlying performances or the basic transaction and the corresponding numbers of Annex LV "List of performances of the Deutsche Bundesbank for the balance of payments" and in the case of payments for direct

investment securitised in shares additionally the international security code number and nominal amount or number of items. In the case of payments relating to securities and financial derivatives, instead of the particulars of the underlying transaction the names of the securities, the international security code number and the nominal amount or number of items shall be cited.

#### **Section 68** **Reporting of payments in transit trade**

(1) If reports must be lodged pursuant to Section 67 subsection 1 for transit trade transactions, the following particulars must be also supplied in addition to Section 67 subsection 4:

1. the designation of the good,
2. the two-digit chapter number of the list of goods for the foreign trade statistics and
3. the country in which the foreign contracting party is headquartered.

(2) The person required to lodge the report pursuant to Section 67 subsection 1 who has reported an outgoing payment in transit trade and thereafter imports or transfers the transit trade good into Germany must report the originally reported amount as “Cancellation in transit trade” to the Deutsche Bundesbank within the deadline of Section 71 subsection 7.

#### **Section 69** **Reporting of payments of maritime shipping companies**

Residents who operate a maritime shipping company must in derogation of Section 67 report payments which they make or receive in connection with the operation of maritime shipping to the Deutsche Bundesbank within the deadline of Section 71 subsection 7. The report must contain the particulars in accordance with Annex Z8 “Revenues and outgoings of maritime shipping”.

#### **Section 70** **Reports of the financial institutions**

(1) Domestic financial institutions must report the following to the Deutsche Bundesbank within the deadline of Section 71 subsection 8:

1. payments for the sale or the acquisition of securities and financial derivatives which the financial institution sells to foreigners or buys from foreigners on its own or third-party account, and payments which the financial institution makes to foreigners or receives from them in connection with the redemption of domestic securities; the reports must contain the particulars in accordance with Annex Z10 “Security transactions and financial derivatives in foreign trade and payments transactions”;
2. interest and dividend payments on domestic securities which they make to or receive from foreigners; the reports must contain the particulars in accordance with Annex Z11 “Payments for securities yields in foreign trade and payments transactions”;
3. incoming and outgoing payments for interest payments and similar revenues and expenses, excluding interest on securities received from or made to foreigners on their own account; the reports must contain the particulars in accordance with Annex Z14 “Interest income and similar revenues in foreign trade and payments transactions (excluding securities)” and Annex Z15 “Interest payments and similar expenses in foreign trade and payments transactions (excluding interest on securities)”;
4. in relation to the movement of travellers

a) incoming and outgoing payments from card transactions; the reports must contain the particulars in accordance with Annex Z12 “Incoming/outgoing payments related to the movement of travellers: card transactions”,

b) incoming and outgoing payments from the purchase and selling of foreign notes and coins and turnover from the sale or the dispatch of travellers cheques denominated in foreign currency; the reports must contain the particulars in accordance with Annex Z13 “Incoming/outgoing payments related to the movement of travellers: foreign notes and coins and travellers cheques denominated in foreign currency”.

(2) Financial institutions within the meaning of subsection 1 shall be

1. monetary financial institutions pursuant to Article 1 first indent of Regulation (EC) No 25/2009 with the exception of money market funds,

2. other credit institutions pursuant to Section 1 subsection 1 of the Banking Act and

3. financial services institutions pursuant to Section 1 subsection 1a of the Banking Act and

4. investment firms pursuant to Section 2 subsection 1 of the Investment Firm Act.

(3) Subsection 1 no. 1 and 3 shall not be applied to payments which do not exceed the amount of 12,500 euro or the equivalent value in other currency.

(4) In the case of reports pursuant to subsection 1 no. 1, the corresponding numbers of Annex LV “List of performances of the Deutsche Bundesbank for the balance of payments” and the names of the securities, the international security code number and the nominal amount or number of items shall be cited.

(5) To the extent that payments pursuant to subsection 1 must be reported, Section 67 shall not apply.

#### **Division 4**

#### **Reporting deadlines, reporting offices and exceptions from the reporting requirement**

#### **Section 71**

#### **Reporting deadlines**

(1) Reports pursuant to Section 64 in accordance with Annex K3 shall be submitted once a year at the latest by the last working day of the sixth calendar month following the balance sheet date of the person required to submit the report or, where the person required to submit the report does not keep accounts, of the sixth calendar month following 31 December.

(2) Reports pursuant to Section 65 in accordance with Annex K4 shall be submitted once a year at the latest by the last working day of the sixth calendar month following the balance sheet date of the person required to submit the report or, where the person required to submit the report is a domestic branch or permanent establishment of a foreign company which does not keep accounts, of the sixth calendar month following the balance sheet date of the foreign company.

(3) Reports pursuant to Section 66 subsection 1 in conjunction with Section 66 subsection 2 pursuant to Annex Z5 shall be submitted monthly by the tenth calendar day of the following month on the basis of the status on the last working day of the preceding month.

(4) Reports pursuant to Section 66 subsection 1 in conjunction with Section 66 subsection 3 pursuant to Annex Z5a sheet 1 and sheet 2 shall be submitted monthly by the twentieth

calendar day of the following month on the basis of the status on the last working day of the preceding month.

(5) Reports pursuant to Section 66 subsection 1 in conjunction with Section 66 subsection 4 in accordance with Annex Z5b must be submitted by the 50th calendar day following the end of each quarter.

(6) The notification pursuant to Section 66 subsection 5 shall be submitted by the 20th calendar day of the following month for the threshold cited in Section 66 subsection 1, by the 50th calendar day following the end of each quarter for the threshold cited in Section 66 subsection 4.

(7) Reports pursuant to Section 67 subsection 1 in conjunction with Section 67 subsection 4 sentence 1 in accordance with Annex Z4, reports pursuant to Section 69 in accordance with Annex Z8 and reports of cancellations pursuant to Section 68 subsection 2 shall be submitted by the seventh calendar day of the month following the making or receipt of the payments or the import or transfer of the transit trade good.

(8) Reports pursuant to Section 67 subsection 1 in conjunction with Section 67 subsection 4 sentence 2 in accordance with Annex Z10 and reports pursuant to Section 70 subsection 1 in accordance with Annexes Z10, Z11, Z12, Z13, Z14 and Z15 must be submitted by the fifth calendar day of the following month.

## **Section 72**

### **Reporting office and means of submission**

(1) The reports pursuant to Sections 64 to 70 shall be submitted to the Deutsche Bundesbank by electronic means. To the extent that this Ordinance does not contain any requirements as regards form, the requirements as regards form issued by the Deutsche Bundesbank shall be observed.

(2) The Deutsche Bundesbank shall on request transmit to the Federal Ministry for Economic Affairs and Energy the particulars of the persons required to submit reports pursuant to Sections 64 and 65 in an appropriate form.

(3) Reports can be submitted in a form other than by electronic means where the Deutsche Bundesbank has approved this and the formal requirements enacted are respected.

## **Section 73**

### **Exceptions**

The Deutsche Bundesbank can

1. permit simplified reports or derogations from reporting deadlines or procedures for individual persons or groups of persons required to submit reports or

2. exempt on a temporary or revocable basis individual persons or groups of persons required to submit reports from a reporting requirement,

to the extent that special reasons exist for this or this does not affect the purpose of the reporting requirements.

## **Chapter 8**

### **Restrictions against certain countries and persons**

#### **Division 1**

#### **Prohibitions of exports, trafficking and brokering**

#### **Section 74**

#### **Prohibitions of exports of goods cited in Part I Section A of the Export List**



(1) The sale, export and transit of goods covered by Part I Section A of the Export List from Germany or via Germany or their shipment using a ship or an aircraft entitled to bear the Federal flag or the national insignia of the Federal Republic of Germany shall be prohibited to the following countries:

1. Belarus,
2. Burma/Myanmar,
3. *(repealed)*
4. Democratic Republic of the Congo,
5. Democratic People's Republic of Korea,
6. *(repealed)*,
7. Iraq,
8. Iran,
9. Lebanon,
10. *(repealed)*
11. Libya,
12. Russia,
13. Zimbabwe,
14. Somalia,
15. Sudan
- 15a. South Sudan,
16. Syria,
- 16a. Venezuela,
17. Central African Republic.

(2) The sale, export and transit of goods covered by Part I Section A of the Export List from Germany or via Germany or their shipment using a ship or an aircraft entitled to bear the Federal flag or the national insignia of the Federal Republic of Germany shall be prohibited to natural or legal persons, groups, organisations or establishments which are cited

1. in the list pursuant to Article 2(3) of Regulation (EC) No 2850/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344 of 28 December 2001, p. 70) in the version applicable at the time,
2. in Annex to Council Decision 2011/486/CFSP of 1 August 2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan (OJ L 199 of 2 August 2011, p. 57) in the version applicable at the time,
3. in Annex I to Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations (OJ L 139 of 29 May 2002, p. 9), amended by Council Regulation (EU) 2016/363 of 14 March 2016 (OJ L 68 of 15 March 2016, p. 17) in the version applicable at the time,

4. in Annex I to Council Regulation (EU) No 356/2010 of 26 April 2010 imposing certain specific restrictive measures directed against certain natural or legal persons, entities or bodies, in view of the situation in Somalia (OJ L 105 of 27 April 2010, p. 1) in the version applicable at the time.

5. in the Annex to Council Decision 2014/932/CFSP of 18 August 2014 concerning restrictive measures in view of the situation in Yemen (OJ L 365 of 19 December 2014, p. 147), most recently amended by Council Decision (CFSP) 2015/882 of 8 June 2015 (OJ L 143 of 9 June 2015, p. 11), in the version applicable at the time,

6. in the Annex to Council Decision (CFSP) 2016/1693 of 20 September 2016 concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them and repealing Common Position 2002/402/CFSP (OJ L 255 of 21 September 2016, p. 25) in the version applicable at the time.

**Section 75**  
**Prohibition of trafficking and brokering transactions relating to goods cited in Part I**  
**Section A of the Export List**

(1) Trafficking and brokering transactions relating to goods cited in Part I Section A of the Export List which are directly or indirectly destined for persons, organisations or institutions in the following countries shall be prohibited:

1. Belarus,
2. Burma/Myanmar,
3. *(repealed)*
4. Democratic Republic of the Congo,
5. Democratic People's Republic of Korea,
6. Iran,
7. Lebanon,
8. Libya,
- 8a. Russia,
9. Zimbabwe,
10. Sudan,
- 10a. South Sudan,
11. Syria
- 11a. Venezuela,
12. Central African Republic.

(2) The prohibition pursuant to subsection 1 shall also apply if the goods are destined for use in the following countries:

1. Belarus,
2. Democratic Republic of the Congo,
3. Democratic People's Republic of Korea,

4. Iran,
5. Lebanon,
6. Libya,
- 6a. Russia,
7. Zimbabwe,
8. Sudan
- 8a. South Sudan,
9. Syria,
- 9a. Venezuela
10. Central African Republic.

**Section 76**  
**Exceptions from Section 74 subsection 1 and Section 75**

(1) In derogation of Section 74 subsection 1 and Section 75 the sale, export, transit or brokering transactions can be authorised under the preconditions of subsections 2 to 17.

(2) Subsection 1 shall apply with reference to Belarus for

1. non-lethal military goods which are destined exclusively for humanitarian or protective purposes or for capacity-building programmes of the United Nations and the European Union or for crisis-management operations of the European Union and the United Nations,
2. vehicles which are not destined for battle deployment which have been manufactured or fitted subsequently with materials to provide ballistic protection and are exclusively destined for the protection of the staff of the European Union and its Member States in Belarus, and
3. protective clothing which is temporarily exported to Belarus by the staff of the United Nations, the European Union or its Member States, by media representatives, humanitarian helpers, development workers or staff attached to these persons for their personal use only.

(3) Subsection 1 shall apply with reference to Burma/Myanmar for

1. non-lethal military goods which are destined exclusively for humanitarian or protective purposes or for capacity-building programmes of the United Nations and the European Union,
2. goods which are destined for crisis-management operations of the European Union and the United Nations,
3. mine-clearing equipment and material for use in mine-clearing operations and
4. protective clothing which is temporarily exported to Burma/Myanmar by the staff of the United Nations, the European Union or its Member States, by media representatives, humanitarian helpers, development workers or staff attached to these persons for their personal use only.

(4) Subsection 1 shall apply with reference to the Democratic Republic of the Congo for

1. goods which are destined exclusively to support the United Nations Organization Mission in the Democratic Republic of the Congo (MONUSCO) or to be used by it, and
  2. protective clothing, including bulletproof vests and military helmets, which is temporarily exported to the Democratic Republic of the Congo by the staff of the United Nations, by media representatives, humanitarian helpers, development workers and attached staff solely for their own use,
  3. non-lethal military equipment which is destined exclusively for humanitarian or protective purposes,
  4. military equipment and other defence-related material for the exclusive purpose of support of or use by the African Union Regional Task Force and
  5. other sale or supply of military equipment and other defence-related material.
- (5) With reference to the Democratic People's Republic of Korea, subsection 1 shall apply to vehicles which are not destined for battle deployment which have been manufactured or fitted subsequently with materials to provide ballistic protection and are exclusively destined for the protection of the staff of the European Union and its Member States in the Democratic People's Republic of Korea.
- (6) Subsection 1 shall apply with reference to Iraq for goods which are needed by the Government of Iraq or the multinational force deployed by United Nations Security Council Resolution 1511 (2003) for the purpose of United Nations Security Council Resolution 1546 (2004).
- (7) Subsection 1 shall apply with reference to Iran to vehicles which are not destined for battle deployment which have been manufactured or fitted subsequently with materials to provide ballistic protection and are exclusively destined for the protection of the staff of the European Union and its Member States in Iran.
- (8) Subsection 1 shall apply with reference to Lebanon for
1. goods which are not supplied directly or indirectly to combat groups whose disarmament has been demanded by the United Nations Security Council in its Resolutions 1559 (2004) and 1680 (2006) and the supply of which has been authorised by the Government of Lebanon or the United Nations Interim Force in Lebanon (UNIFIL),
  2. goods which are destined for use by UNIFIL in the context of its mission or by the Lebanese armed forces, and
  3. protective clothing which is temporarily exported to Lebanon by staff of the United Nations, the European Union or its Member States.
- (9) Subsection 1 shall apply with reference to Libya for
1. non-lethal military goods which are destined exclusively for humanitarian or protective purposes,
  2. other supply, sale or passing on of military equipment,
  3. protective clothing, including body armour vests and military helmets, which is temporarily exported to Libya by the staff of the United Nations, the European Union or its Member States, by media representatives, humanitarian helpers, development workers or staff attached to these persons for their personal use only,
  4. non-lethal military goods which are destined exclusively for support of the Libyan Government in the fields of security and disarmament, and

5. small arms and light weapons and related goods which are temporarily exported to Libya solely for use by the staff of the United Nations, media representatives, humanitarian helpers, development workers or staff attached to these persons.

(10) Subsection 1 shall apply with reference to Russia for

1. goods whose supply serves to fulfil contracts or agreements concluded before 1 August 2014,
2. hydrazine with a minimum concentration of 70% and monomethylhydrazine
  - a) for use by launcher systems operated by launcher organisations of Member States of the European Union or launcher organisations resident in a Member State of the European Union,
  - b) for use in launches in the context of space flight programmes of the European Union, its Member States or the European Space Agency or
  - c) to fuel satellites by a manufacturer resident in a Member State.

The quantity of hydrazine eligible to be licensed pursuant to sentence 1 number 2 shall be calculated for the respective launch or satellite for which it is intended, and in the case of hydrazine with a minimum concentration of 70% may not exceed 800 kg for each individual launch or satellite, and

3. hydrazine with a minimum concentration of 70% for use in the context of the ExoMars Mission 2020 which is intended
  - a) for the testing and flight of the ExoMars descent module up to a total amount of 5,000 kg for the entire duration of the mission or
  - b) for the flight of the ExoMars launcher module up to a total amount of 300 kg.

(11) Subsection 1 shall apply with reference to Zimbabwe for

1. non-lethal military goods which are destined exclusively for humanitarian or protective purposes or for capacity-building programmes of the United Nations and the European Union,
2. goods which are destined for crisis-management operations of the European Union and the United Nations, and
3. protective clothing which is temporarily exported to Zimbabwe by the staff of the United Nations, the European Union or its Member States, by media representatives, humanitarian helpers, development workers or staff attached to these persons for their personal use only.

(12) Subsection 1 shall apply with reference to Somalia for

1. goods which are destined exclusively to support the staff of the United Nations, including the United Nations Operation in Somalia (UNSCOM), or to be used by them,
2. goods which are destined exclusively to support the African Union Mission in Somalia (AMISOM) or to be used by it,
3. goods which are destined exclusively to support or to be used by the strategic partners of the mission of the African Union in Somalia which are acting exclusively in the context of the strategic concept of the African Union of 5 January 2012 (or strategic follow-up concepts of the African Union) and in cooperation and coordination with the African Union Mission in Somalia (AMISOM),

4. goods which are destined exclusively to support the European Union Training Mission (EUTM) or to be used by it,
5. goods which are destined to be used exclusively by Member States of the United Nations or international, regional and subregional organisations which are engaged in action to combat acts of piracy and armed robbery off the coast of Somalia in response to the request notified to the Secretary-General by the Federal Government of Somalia, whereby all such action must be compliant with the applicable international humanitarian law and human rights standards,
6. goods which are destined exclusively to build up the national security forces of Somalia or other entities of the Somali security sector than those of the Federal Government of Somalia to ensure the security of the Somali population.
7. protective clothing, including body armour vests and military helmets, which is temporarily exported to Somalia by the staff of the United Nations, by media representatives and humanitarian helpers and development workers and attached staff solely for their own use, and
8. non-lethal military goods which are destined exclusively for humanitarian or protective purposes.

(13) Subsection 1 shall apply with reference to Sudan for

1. non-lethal military equipment which is destined exclusively for
  - a) humanitarian or protective purposes,
  - b) monitoring the human rights situation,
  - c) capacity-building programmes of the United Nations, the African Union and the European Union,
2. material which is destined exclusively for crisis-management operations of the United Nations, the African Union or the European Union,
3. mine-clearing equipment and material for use in mine-clearing operations,
4. vehicles which are not destined for battle deployment which have been fitted with bullet proofing during manufacture or subsequently and are only destined for use as protection, in Sudan, by the staff of the European Union and its Member States or by staff of the United Nations or the African Union, and
5. protective clothing, including bulletproof vests and military helmets, which is temporarily exported to Sudan by the staff of the United Nations, the European Union or its Member States, by media representatives, humanitarian helpers, development workers and attached staff solely for their own use.

(14) Subsection 1 shall apply with reference to South Sudan for

1. goods which are destined exclusively to support the staff of the United Nations, including the United Nations Mission in South Sudan (UNMISS) and the United Nations Interim Security Force for Abyei (UNISFA), or to be used by them,
2. non-lethal military goods which are destined exclusively for humanitarian or protective purposes,
3. protective clothing, including bulletproof vests and military helmets, which is temporarily exported to South Sudan by the staff of the United Nations, media representatives, humanitarian helpers and development workers and attached staff solely for their own use,

4. goods which are temporarily exported to South Sudan by the troops of a state which is acting in compliance with international law solely and directly for the purpose of facilitating the protection or evacuation of its nationals and persons for whom it bears consular responsibility in South Sudan,
5. goods for the Regional Task Force of the African Union or in support of it which are destined solely for regional deployments against the Lord's Resistance Army,
6. goods which are destined solely to support the implementation of the peace agreement, and
7. other sale or supply of goods.

(15) Subsection 1 shall apply with reference to Syria for

1. goods which are destined exclusively the support of or use by the United Nations Disengagement Observer Force (UNDOF),
2. non-lethal military goods which are destined exclusively for
  - a) humanitarian or protective purposes,
  - b) the protection of the civilian population,
  - c) capacity-building programmes of the United Nations and the European Union,
  - d) crisis-management operations of the European Union and the United Nations, or
  - e) the national coalition of the forces of the Syrian revolution and opposition for the purpose of the protection of the civilian population,
3. vehicles which are not destined for battle deployment which have been manufactured or fitted subsequently with materials to provide ballistic protection and are exclusively destined for the protection of the staff of the European Union and its Member States in Syria, and
4. protective clothing which is temporarily exported to Syria by the staff of the United Nations, the European Union or its Member States, by media representatives, humanitarian helpers, development workers or staff attached to these persons solely for their own use.

(16) Subsection 1 shall apply with reference to Venezuela for

1. goods whose supply serves to fulfil contracts or side-agreements concluded before 13 November 2017 and notified to the Federal Office for Economic Affairs and Export Control (BAFA) by 21 November 2017,
2. non-lethal military goods which are destined exclusively for humanitarian or protective purposes or for capacity-building programmes of the United Nations and the Union and its Member States or regional and subregional organisations,
3. material which is destined for crisis-management operations of the United Nations, the Union and subregional organisations,
4. mine-clearing equipment and material for use in mine-clearing operations and
5. protective clothing, including bulletproof vests and military helmets, which is temporarily exported to Venezuela by staff of the United Nations, staff of the European Union or its Member States, by media representatives, humanitarian helpers, development workers and attached staff solely for their own use.



(17) Subsection 1 shall apply with reference to the Central African Republic for

1. goods which are destined exclusively for support for the Multidimensional Integrated Stabilization Mission of the United Nations in the Central African Republic (MINUSCA), the missions of the European Union and of the French troops seconded to the Central African Republic and the troops of other Member States of the United Nations or for use by these,
2. protective clothing, including body armour vests and military helmets, which is temporarily exported to the Central African Republic by staff of the United Nations, staff of the European Union or its Member States, by media representatives, humanitarian helpers, development workers or staff attached to these persons solely for their own use,
3. small arms and related goods which are destined exclusively for use by international patrols which uphold security in the Sangha River Trinational Protected Area in order to take action against poaching, the smuggling of ivory and weapons and other activities which violate the domestic legislation of the Central African Republic or its international obligations,
4. non-lethal military goods which are destined exclusively for humanitarian or protective purposes,
5. weapons with a calibre of up to 14.5 mm and ammunition and components developed specifically for these weapons, other military equipment and related goods and non-lethal equipment to the security forces of the Central African Republic, including the institutions of civil public order for the exclusive purpose of supporting or being used in the course of the process of reform of the security sector in the Central African Republic, and
6. military equipment and related goods in harmony with the procedure pursuant to Figure 54 f) of United Nations Security Council Resolution 2127 (2013).

#### **Section 76a**

##### **Exceptions from Section 74 subsection 1 and Section 75 in individual cases**

In derogation of Section 74 subsection 1 and Section 75, it shall be possible to license

1. the export or transit of goods which are exported or transited by German authorities to undertake official tasks and which are destined exclusively for use by the German authorities themselves and remain in the hands of the German authorities, and
2. the sale, export, transit or brokering transactions relating to goods which are exclusively destined for the self-protection of
  - a) diplomatic or career consular missions with the exception of missions of the countries cited in Section 74 subsection 1 or
  - b) offices of international intergovernmental organisations, their specialised agencies and the intergovernmental institutions institutionally associated with them.

#### **Division 2**

##### **Import and transfer prohibitions**

#### **Section 77**

##### **Prohibitions of the import of goods covered by Part I Section A of the Export List from certain countries**

(1) The import and acquisition of goods covered by Part I Section A of the Export List from the following countries shall be prohibited, irrespective of whether the goods originated from these countries:

1. Democratic People's Republic of Korea,
2. *(repealed)*,
3. Iran,
4. Libya,
5. Syria,
6. Russia.

(2) This prohibition shall also apply to the transport, including the use of a ship or an aircraft which is entitled to bear the Federal flag or the national insignia of the Federal Republic of Germany.

(3) The prohibitions pursuant to subsections 1 and 2 shall not apply to the re-import of goods whose export or transit has previously been authorised pursuant to Section 76a.

(4) The prohibitions pursuant to subsections 1 and 2 shall not apply in relation to Russia for

1. the import or transport of spare parts needed for the maintenance and safeguarding of existing capacities within the European Union,
2. the import or transport of goods whose delivery serves to fulfil contracts or agreements concluded before 1 August 2014,
3. the import, acquisition or transport of hydrazine with a minimum concentration of 70%, of monomethylhydrazine and unsymmetrical dimethylhydrazine for use in launcher systems operated by launcher organisations of the Member States or launcher organisations based in a Member State, for use for launches in the context of space flight programmes of the European Union, its Member States or the European Space Agency or for the fuelling of satellites by a satellite manufacturer based in a Member State, and
4. the import, acquisition or transport of hydrazine with a minimum concentration of 70% for use in the context of the ExoMars Mission 2020 which is intended
  - a) for the testing and flight of the ExoMars descent module up to a total amount of 5,000 kg for the entire duration of the mission or
  - b) for the flight of the ExoMars launcher module up to a total amount of 300 kg.

The import, acquisition and transport pursuant to sentence 1 number 3 and 4 shall require authorisation by the Federal Office for Economic Affairs and Export Control (BAFA).

### **Division 3**

#### **Special licensing requirements**

#### **Section 78**

##### **Licensing requirements for the export of certain equipment**

The export of equipment for the manufacture of bank notes, stamps, special bank note or stamp paper shall be subject to a licence if the country of destination is the Democratic People's Republic of Korea.

### **Division 4**

#### **Offences committed by Germans abroad**

**Section 79**  
**Restrictions pursuant to Section 5 subsection 5 of the Foreign Trade and Payments Act**

Sections 74 to 77 shall also apply to Germans abroad.

**Chapter 9**  
**Criminal and administrative offences**

**Division 1**  
**Criminal offences**

**Section 80**  
**Criminal offences**

(1) Pursuant to Section 17 subsection 1, subsection 2 to 5 of the Foreign Trade and Payments Act, punishment shall be imposed on anyone who intentionally or recklessly

1. in violation of Section 74, also in conjunction with Section 79, sells, exports, transits or transports goods cited there,
2. in violation of Section 75 subsection 1, also in conjunction with Section 75 subsection 2, in both cases also in conjunction with Section 79, undertakes a trafficking and brokering transaction or
3. in violation of Section 77 subsection 1, also in conjunction with Section 77 subsection 2, in both cases also in conjunction with Section 79, imports, acquires or transports goods cited there.

(2) Pursuant to Section 18 subsection 1b number 3 of the Foreign Trade and Payments Act, punishment shall be imposed on anyone who

1. exercises a voting right in violation of Section 59a subsection 2 sentence 1 or
2. in violation of Section 59a subsection 3 transmits or otherwise discloses information cited there.

**Division 2**  
**Administrative offences**

**Section 81**  
**Administrative offences - violations of provisions of the Foreign Trade and Payments Ordinance**

(1) An administrative offence as defined by Section 19 subsection 3 no. 1 letter a of the Foreign Trade and Payments Act is committed by anyone who intentionally or negligently

1. in violation of Section 7 issues a boycott declaration,
2. exports goods cited in Section 10 sentence 1 without a licence pursuant to that provision,
3. transfers goods cited in Section 11 subsection 2 without a licence pursuant to that provision,
4. transfers goods cited in violation of Section 11 subsection 4 sentence 3 in violation of that provision,
5. uses a good in violation of Section 29 sentence 2,
6. (repealed),

7. provides technical support without a licence pursuant to Section 52a subsection 1 or Section 52b subsection 1,
  8. provides technical support in violation of Section 52a subsection 2 sentence 3 or Section 52b subsection 2 sentence 3,
  9. effects a payment or another performance in violation of Section 54 subsection 1.
- (2) An administrative offence within the meaning of Section 19 subsection 3 no. 1 letter b of the Foreign Trade and Payments Act is committed by anyone who intentionally or negligently
1. in violation of Section 5 subsection 1 sentence 1 does not return a certified document or does not do so in time,
  2. in violation of Section 6 subsection 1 does not retain a document or does not do so for at least five years,
  3. in violation of Section 12 subsection 1, also in conjunction with Section 20, does not present an export consignment or does not do so correctly or in time,
  4. in violation of Section 13 subsection 1 does not submit a cargo manifest or does not do so correctly or in time,
  5. in violation of Section 13 subsection 5 does not present a declaration or does not do so correctly, in the prescribed manner or in time,
  6. in violation of Section 14 subsection 3, also in conjunction with Section 20, or in violation of Section 14 subsection 4, also in conjunction with Section 20, Section 20a subsection 3 or Section 20b subsection 2, removes a good or causes it to be removed or loads a good or causes it to be loaded,
  7. in violation of Section 15 subsection 1, also in conjunction with Section 20, does not provide a particular cited there or does not do so correctly, fully or in time,
  8. in violation of Section 20a subsection 1 sentence 1 does not present an exit summary declaration or does not present it correctly, fully or in time.
  9. in violation of Section 22 subsection 1 does not inform the recipient or does not do so correctly, fully or in time,
  10. in violation of Section 22 subsection 2 sentence 1 or Section 26 subsection 1 sentence 1 does not keep a register or a record or does not do so correctly, fully or in time,
  11. in violation of Section 23 subsection 1 sentence 2 does not ensure that the export licence is available,
  12. in violation of Section 23 subsection 1 sentence 3 does not transmit the export licence or does not do so in time,
  13. in violation of Section 23 subsection 5 sentence 2 or Section 25 subsection 1 does not present the export licence or a document cited in it or does not do so in time,
  14. in violation of Section 29 sentence 1 does not make a communication or does not do so correctly, fully or in time,
  15. in violation of Section 30 subsection 3 sentence 1, also in conjunction with Section 48 sentence 2, does not provide documentation or does not do so correctly, fully or in time,

16. in violation of Section 30 subsection 3 sentence 2, also in conjunction with Section 48 sentence 2,

- a) does not make a notification or does not do so correctly, fully or in time or
- b) does not return a certificate or does not do so in time and does not make a communication or does not do so correctly, fully or in time,

17. in violation of Section 32 subsection 1 sentence 1 does not ensure that a document mentioned there is available,

18. in violation of Section 32 subsection 3 does not submit a document cited there or does not do so correctly or in time,

19. in violation of Section 64 subsection 1, Section 65 subsection 1, Section 66 subsection 1 or subsection 4 sentence 1, Section 67 subsection 1, also in conjunction with Section 68 subsection 1, in violation of Section 69 or Section 70 subsection 1, does not make a report, or does not do so correctly, fully or in time or

20. in violation of Section 68 subsection 2 does not make a notification or does not do so correctly, fully or in time.

## **Section 82**

### **Administrative offences – violations of acts of the European Union**

(1) An administrative offence within the meaning of Section 19 subsection 4 sentence 1 no. 1 of the Foreign Trade and Payments Act is committed by anyone who intentionally or negligently in violation of

1. Article 2(1) of Council Regulation (EEC) No 3541/92 of 7 December 1992 prohibiting the satisfying of Iraqi claims with regard to contracts and transactions, the performance of which was affected by United Nations Security Council Resolution 661 (1990) and related resolutions (OJ L 361 of 10 December 1992, p. 1),

2. Article 2(1) of Council Regulation (EC) No 3275/93 of 29 November 1993 prohibiting the satisfying of claims with regard to contracts and transactions the performance of which was affected by the United Nations Security Council Resolution 883 (1993) and related resolutions (OJ L 295 of 30 November 1993, p. 4),

3. Article 2(1) of Council Regulation (EC) No 1264/94 of 30 May 1994 prohibiting the satisfying of claims by the Haitian authorities with regard to contracts and transactions the performance of which was affected by the measures imposed by or pursuant to United Nations Security Council Resolutions 917 (1994), 841 (1993), 873 (1993) and 875 (1993) (OJ L 139 of 2 June 1994, p. 4),

4. Article 2(1) of Council Regulation (EC) No 1733/94 of 11 July 1994 prohibiting the satisfying of claims with regard to contracts and transactions the performance of which was affected by the United Nations Security Council Resolution 757 (1992) and related resolutions (OJ L 182 of 16 July 1994, p. 1),

4a. Article 7a(1) of Council Regulation (EC) No 1183/2005 of 18 July 2005 concerning restrictive measures in view of the situation in the Democratic Republic of the Congo (OJ L 193 of 23 July 2005, p. 1), most recently amended by Implementing Regulation (EU) 2021/2177 (OJ L 443 of 10 December 2021, p. 3),

4b. Article 8d(1) of Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ L 134 of 20 May 2006, p. 1), most recently amended by Regulation (EU) 2022/577 (OJ L 111 of 8 April 2022, p. 67),

4c. Article 27(1) of Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (OJ L 16 of 19 January 2012, p. 1, L 259 of 27 September 2012, p. 7), most recently amended by Regulation (EU) No 1323/2014 (OJ L 358 of 13 December 2014, p. 1),

5. Article 38(1) of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ L 88 of 24 March 2012, p. 1, L 332 of 4 December 2012, p. 31), most recently amended by Implementing Regulation (EU) 2016/74 (OJ L 16 of 23 January 2016, p. 6),

5a. Article 4h(1) of Council Regulation (EU) No 401/2013 of 2 May 2013 concerning restrictive measures against Myanmar/Burma and repealing Regulation (EC) No 194/2008 (OJ L 121 of 3 May 2013, p. 1), most recently amended by Implementing Regulation (EU) 2018/1117 (OJ L 204 of 13 August 2018, p. 9),

6. Article 14(1) of Council Regulation (EU) No 224/2014 of 10 March 2014 concerning restrictive measures in view of the situation in the Central African Republic (OJ L 70 of 11 March 2014, p. 1),

7. Article 6(1) of Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictions on the import into the Union of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol (OJ L 183 of 24 June 2014, p. 9), most recently amended by Regulation (EU) No 1351/2014 (OJ L 365 of 19 December 2014, p. 46, L 37 of 13 February 2015, p. 24),

8. Article 12(1) of Council Regulation (EU) No 747/2014 of 10 July 2014 concerning restrictive measures in view of the situation in Sudan and repealing Regulations (EC) No 131/2004 and (EC) No 1184/2005 (OJ L 203 of 11 July 2014, p. 1),

9. *(repealed)*

10. Article 11(1) of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229 of 31 July 2014, p. 1), most recently amended by Regulation (EU) 2022/576 (OJ L 111 of 8 April 2022, p. 1),

11. Article 12(1) of Council Regulation (EU) No 1352/2014 of 18 December 2014 concerning restrictive measures in view of the situation in Yemen (OJ L 365 of 19 December 2014, p. 60), most recently amended by Regulation (EU) No 2015/878 (OJ L 143 of 9 June 2014, p. 1),

12. Article 17(1) of Council Regulation (EU) 2015/735 of 7 May 2015 concerning restrictive measures in respect of the situation in South Sudan, and repealing Regulation (EU) No 748/2014 (OJ L 117 of 8 May 2015, p. 13),

13. Article 53(1) of Council Regulation (EU) 2017/1509 of 30 August 2017 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Regulation (EC) No 329/2007 (OJ L 224 of 31 August 2017, p. 1), amended by Regulation (EU) 2017/1858 (OJ L 265 I of 16 October 2017, p. 1), or

14. Article 15(1) of Council Regulation (EU) No 2017/2063 of 13 November 2017 concerning restrictive measures in view of the situation in Venezuela (OJ L 295 of 14 November 2017, p. 21), or

15. Article 10(1) of Council Regulation (EU) 2022/263 of 23 February 2022 concerning restrictive measures in response to the recognition of the non-government

controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas (OJ L 42 I of 23 February 2022, p. 77),

fulfils a claim or allows a demand or a claim cited there. To the extent that the provision cited in sentence 1 number 5 refers to Annexes VIII, IX, XIII and XIV of Regulation (EU) No 267/2012, these Annexes shall apply in the version applicable at the time.

(2) An administrative offence within the meaning of Section 19 subsection 4 sentence 1 no. 1 of the Foreign Trade and Payments Act is committed by anyone who, in violation of Article 5(1) of Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (OJ L 309 of 29 November 1996, p. 1, L 179 of 8 July 1997, p. 10), amended by Regulation (EC) No 807/2003 (OJ L 122 of 16 May 2003, p. 36), intentionally or negligently fulfils a demand or a prohibition cited there. To the extent that the provisions cited in sentence 1 refer to the Annex of Regulation (EC) No 2271/96, this Annex shall apply in the version applicable at the time.

(3) An administrative offence within the meaning of Section 19 subsection 4 sentence 1 no. 2 of the Foreign Trade and Payments Act is committed by anyone who intentionally or negligently does not present a container or a related certificate to a Community authority for examination or does not do so in time in violation of Article 4(1) of 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) 2020/149 (OJ L 428 of 18 December 2020, p. 38).

(4) An administrative offence within the meaning of Section 19 subsection 4 sentence 1 no. 1 of the Foreign Trade and Payments Act shall be committed by anyone who violates Regulation (EC) No 765/2006 by intentionally or negligently

1. purchasing or otherwise trading a security or a money market instrument cited in Article 1j in violation of that provision,
2. purchasing a security cited in Article 1ja(1) in violation of that provision,
3. purchasing a security cited in Article 1jb in violation of that provision,
4. entering into an arrangement cited in Article 1k(1) in violation of that provision or
5. accepting a deposit cited in Article 1u(1) in violation of that provision.

(5) An administrative offence within the meaning of Section 19 subsection 4 sentence 1 no. 1 of the Foreign Trade and Payments Act shall be committed by anyone who violates Regulation (EU) No 36/2012 by intentionally or negligently

1. purchasing a state or state-guaranteed bond or providing brokering services relating to the purchase of a state or state-guaranteed bond in violation of Article 24(a) or (b),
2. opening a new account, entering into a correspondent bank relationship, opening a new representation or founding a branch, subsidiary or a new joint venture in violation of Article 25(1) or
3. entering into an arrangement referring to the opening of a representation or the founding of a branch or subsidiary in violation of Article 25(2)(b).

(6) An administrative offence within the meaning of Section 19 subsection 4 sentence 1 no. 1 of the Foreign Trade and Payments Act shall be committed by anyone who violates Regulation (EU) No 267/2012 by intentionally or negligently



1. entering into an arrangement cited there without a licence pursuant to Article 2a(1)(d) part of sentence before sentence 2(i), also in conjunction with sentence 2, or Article 3a(1)(d) or

2. entering into an arrangement cited in Article 4b(c) in violation of that provision.

(7) An administrative offence within the meaning of Section 19 subsection 4 sentence 1 no. 2 of the Foreign Trade and Payments Act shall be committed by anyone who intentionally or negligently does not present a good or does not do so in time in violation of Article 267(2) of Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 December 2013 laying down the Union Customs Code (OJ L 269 of 10 October 2013, p. 1), most recently amended by Regulation (EU) 2019/632 (OJ L 111 of 25 April 2019, p. 54).

(8) An administrative offence within the meaning of Section 19 subsection 4 sentence 1 no. 1 of the Foreign Trade and Payments Act shall be committed by anyone who violates Regulation (EU) No 692/2014 by intentionally or negligently

1. acquiring or expanding a participation in ownership in violation of Article 2a(1)(a) or (b),

2. entering into an arrangement cited in Article 2a(1)(c) in violation of that provision,

3. creating a joint venture in violation of Article 2a(1)(d) or

4. providing an investment service in violation of Article 2a(1)(e).

(9) An administrative offence within the meaning of Section 19 subsection 4 sentence 1 no. 1 of the Foreign Trade and Payments Act shall be committed by anyone who violates Regulation (EU) No 833/2014 by intentionally or negligently

1. participating in a project or otherwise contributing to such a project cited in Article 2e(3) in violation of that provision,

2. extending an existing participation cited in Article 3a(1)(a) in violation of that provision,

3. participating in a loan, credit or otherwise providing financing cited in Article 3a(1)(b) in violation of that provision,

4. creating a new joint venture cited in Article 3a(1)(c) in violation of that provision,

5. purchasing a security or a money market instrument cited in Article 5(1) to (3) or (4) or Article 5a(1) in violation of those provisions,

6. purchasing a security cited in Article 5(5) in violation of that provision,

7. entering into an arrangement cited in Article 5(6) sentence 1 or Article 5a(2) sentence 1 in violation of those provisions,

8. undertaking a transaction cited in Article 5a(4) in violation of that provision,

9. engaging in a transaction with a legal person, entity or body cited in Article 5aa(1) in violation of that provision,

10. accepting a deposit cited in Article 5b(1) in violation of that provision,

11. providing access cited in Article 5j(2) in violation of that provision,

12. providing support to a person, entity or body cited in Article 5l(1) in violation of that provision or

13. registering a trust or similar legal arrangement cited in Article 5m(1) in violation of that provision.

(10) An administrative offence within the meaning of Section 19 subsection 4 sentence 1 no. 2 of the Foreign Trade and Payments Act shall be committed by anyone who, without authorisation pursuant to Article 3(2) sentence 1 of Regulation (EU) No 2015/936 of the European Parliament and of the Council of 9 June 2015 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Community import rules of the Union (OJ L 160 of 25 June 2015, p. 1), intentionally or recklessly transfers to free circulation in the Community an import cited there.

(11) An administrative offence within the meaning of Section 19 subsection 4 sentence 1 number 2 of the Foreign Trade and Payments Act shall be committed by anyone who violates Commission Implementing Regulation (EU) No 2015/447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343 of 29 December 2015, p. 558), by intentionally or recklessly

1. as the holder of a licence or approval pursuant to Article 166 of Regulation (EU) No 952/2013 in an export procedure in violation of Article 224, not providing a document cited in the licence or approval or a document which is required to fulfil an obligation cited in Article 267(3)(a), (b) or (c) of Regulation (EU) No 952/2013 or not providing it correctly, completely or in time,

2. in the export procedure violating an enforceable condition attached to an approval pursuant to Article 234(1)(b), (c), (e) or (g),

3. violating Article 331(1)(a) or (b) by not providing a particular or not providing it correctly, fully or in time,

4. violating Article 340(1) by not informing the customs office of export or not informing it correctly, fully or in time,

5. violating Article 340(2) by not informing the customs office of export or not informing it correctly or immediately following the removal of the good from the customs office of export or

6. performing the altered contract of carriage without approval pursuant to Article 340(3).

(12) An administrative offence within the meaning of Section 19 subsection 4 sentence 1 no. 1 of the Foreign Trade and Payments Act shall be committed by anyone who violates Regulation (EU) No 2017/1509 by intentionally or negligently

1. permitting an investment cited in Article 17(1) in violation of that provision,

2. founding, maintaining or operating a joint venture or a cooperative institution in violation of Article 17(2)(a),

3. providing finance or financial assistance in violation of Article 17(2)(b),

4. providing an investment service in violation of Article 17(2)(c),

5. participating in a joint venture or other business arrangement cited in Article 17(2)(d) in violation of that provision,

6. leasing out, renting out or making available in another way real estate in violation of Article 20(1)(a),

7. leasing or renting real estate in violation of Article 20(1)(b),

8. transferring money in violation of Article 21(1),
  9. entering into or participating in a transaction in violation of Article 21(2),
  10. not refusing a transaction in violation of Article 23(1)(c),
  11. opening a bank account at a credit or financial institution cited in Article 24(a) in violation of that provision,
  12. establishing a correspondent banking relationship with a credit or financial institution cited in Article 24(b) in violation of that provision,
  13. opening a representation or establishing a new branch or subsidiary in violation of Article 24(c),
  14. founding a joint venture with a credit or financial institution cited in Article 24(d) in violation of that provision,
  15. not closing, or not closing in time, a bank account at a credit or financial institution cited in Article 26(a) in violation of that provision,
  16. not terminating, or not terminating in time, a correspondent banking relationship with a credit or financial institution cited in Article 26(b) in violation of that provision,
  17. not closing, or not closing in time, a representation, branch or subsidiary in violation of Article 26(c),
  18. not terminating, or not terminating in time, a joint venture with a credit or financial institution cited in Article 26(d) in violation of that provision,
  19. not relinquishing, or not relinquishing in time, an ownership interest in a credit or financial institution cited in Article 26(e) in violation of that provision,
  20. opening an account in violation of Article 28(1),
  21. not closing, or not closing in time, an account in violation of Article 28(2),
  22. entering into an arrangement cited in Article 30(b) for or on behalf of a credit or financial institute in violation of that provision,
  23. operating a representation, branch or subsidiary cited in Article 30(e) in violation of that provision or
  24. purchasing a bond cited in Article 31(a) or (b) or providing a brokering service relating to the purchase of such a bond in violation of that provision.
- (13) An administrative offence within the meaning of Section 19 subsection 4 sentence 1 number 1 of the Foreign Trade and Payments Act shall be committed by 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 intentionally or negligently
1. violating an enforceable order pursuant to Article 7(1) sentence 1 or
  2. transferring goods cited in Article 11(1) sentence 1 without a licence pursuant to that provision,

To the extent that the provisions cited in sentence 1 refer to Annex I or Annex IV of Regulation (EU) 2021/821, these Annexes shall apply in the version applicable at the time.

(14) An administrative offence within the meaning of Section 19 subsection 4 sentence 1 no. 1 of the Foreign Trade and Payments Act shall be committed by anyone who violates Regulation (EU) 2022/263 by intentionally or negligently

1. expanding a participation in violation of Article 3(1)(a) or (b),
2. entering into an arrangement cited in Article 3(1)(c) in violation of that provision or
3. creating a joint venture in violation of Article 3(1)(d).

## **Chapter 10** **Transitional arrangements, evaluation and entry into force, expiry**

### **Section 82a** **Transitional provisions**

Sections 55 to 62a in the version in force from 1 May 2021 shall be applied for the first time to legal transactions based on the law of obligations regarding the acquisition of a domestic company which are concluded from 1 May 2021. In the case of an offer within the meaning of the Securities Acquisition and Takeover Act, the relevant time shall be the time of the publication of the decision to submit the offer.

### **Section 82b** **Evaluation of the amendments to Sections 55 to 62a resulting from the Fifteenth, Sixteenth and Seventeenth Ordinance Amending the Foreign Trade and Payments Ordinance**

The Federal Ministry for Economic Affairs and Energy shall evaluate with the participation of the Federal Foreign Office, the Federal Ministry of Defence, the Federal Ministry of the Interior, Building and Community, the Federal Ministry of Finance, the Federal Ministry of Health, the Federal Ministry of Labour and Social Affairs, the Federal Ministry of Food and Agriculture and the Federal Ministry of Transport and Digital Infrastructure the application of Sections 55 to 62a in the versions of the Fifteenth Ordinance Amending the Foreign Trade and Payments Ordinance of 25 May 2020 (Federal Gazette AT 2 June 2020 V1), the Sixteenth Ordinance Amending the Foreign Trade and Payments Ordinance of 26 October 2020 (Federal Gazette AT 28 October 2020 V1) and the Seventeenth Ordinance Amending the Foreign Trade and Payments Ordinance of 27 April 2021 (federal Gazette AT 30 April 2021) with regard to the effectiveness of the rules and the expenses and effort borne by companies and administration due to the execution of the rules. The evaluation period shall commence on 1 May 2021 and shall end at the end of the evaluation period pursuant to Section 31 of the Foreign Trade and Payments Act 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).

### **Section 83** **Entry into force, expiry**

This Ordinance shall enter into force on the day of the entry into force of the Act Modernising Foreign Trade and Payments Law pursuant to Article 4 subsection 1 sentence 1. At the same time, the Foreign Trade and Payments Ordinance in the version of 22 November 1993 (Federal Law Gazette I p. 1934, 2493), most recently amended by Article 27(12) of the Act of 4 July 2013 (Federal Law Gazette I p. 1981), shall expire.