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Act of 20 July 2017 (Federal Law Gazette I p. 2789)

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

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

### **Part 1**

#### **Legal transactions and actions**

##### **Section 1**

##### **Principles**

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

(2) This shall be without prejudice to

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

##### **Section 2**

##### **Definitions**

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

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

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

If pursuant to the export contract a foreigner holds the right to dispose of the goods, the domestic contracting party shall be deemed to be the exporter. If no export contract was

concluded, or if the contracting party is not acting on its own behalf, the exporter shall be deemed to be the party which actually has the power to determine the export.

(3) An export shall mean

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

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

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

(6) Foreign assets shall mean

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

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

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

(9) Transit shall mean

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

(10) Importer shall mean any natural or legal person or partnership which

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

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

(11) Import shall mean

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

If material goods are delivered from third countries to a free zone or in a suspensive procedure, import shall take place only once the material goods

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

(12) Country of purchase shall mean the country in which the non-EU party from which the EU resident acquires the goods is resident. This country shall continue to be deemed the

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

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

(14) A trafficking and brokering transaction shall mean

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

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

(15) Residents shall mean

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

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

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

(18) EU residents shall mean

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

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

(20) Transferer shall mean any natural or legal person or partnership which has the power to determine the transfer of goods and at the time of transfer

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

2. in the case of subsection 21 no. 2 holds the contract with the consignee in Germany.

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

(21) Transfer shall mean

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

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

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

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

(24) Securities shall mean

1. securities within the meaning of Section 1 subsection 1 of the Securities Deposit Act,

2. shares in a securities depository or a collective debt register claim,

3. rights to deliver or assign securities within the meaning of nos. 1 and 2.

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

(25) The customs territory of the European Union shall mean the customs territory of the European Community pursuant to Article 3 of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code (OJ L 302 of 19 October 1992, p. 1) in the version applicable at the time.

### **Section 3**

#### **Branches and permanent establishments**

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

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

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

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

2. domestic branches and permanent establishments of the same foreigner shall each be regarded as residents in derogation from subsection 1 sentence 2,
3. branches and permanent establishments shall not be regarded as foreigners or residents in derogation from Section 2 subsection 5 and 15 or
4. branches and permanent establishments shall not be regarded as EU residents or non-EU residents in derogation from Section 2 subsection 18 and 19.

#### **Section 4**

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

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

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

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

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

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

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

#### **Section 5**

##### **Subject of restrictions**

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

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

2. goods which are destined for the conduct of military actions.

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

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

1. manufacture or develop war weapons or other military equipment or

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

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

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

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

## **Section 6 Individual intervention**

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

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

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

## **Section 7**

### **Individual intervention in maritime transport beyond the German territorial sea**

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

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

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

1. the nature and size of the load,

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

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

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

### **Section 8 Issuing of licences**

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

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

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

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

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

### **Section 9 Issuing of certificates**

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

## **Part 2 Supplementary provisions**

### **Section 10 Deutsche Bundesbank**

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

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

(1) Procedural provisions can be enacted by ordinance

1. to implement this Act and ordinances issued on the basis of this Act,

2. to examine the lawfulness of legal transactions or actions in foreign trade and payments transactions and

3. to implement

a) the provisions of the European treaties, including the related protocols,

b) the agreements of the European Union and

c) the legal acts of the European Union based on the treaties and agreements cited in letters a and b.

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

1. it can be ascertained whether the preconditions for the lifting, relaxation or imposition of restrictions pertain,

2. the balance of payments of the Federal Republic of Germany can be drawn up at any time,

3. the safeguarding of the interests of external economic policy is ensured or

4. obligations under international agreements or international export control regimes can be fulfilled.

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

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

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

## **Section 12** **Issuing of ordinances**

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

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

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

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

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



### **Section 13**

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

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

(2) The following authorities shall have exclusive responsibility:

1. the Deutsche Bundesbank in the field of movements of capital and payments and the movement of foreign assets and gold unless prescribed otherwise below,
2. the Federal Ministry for Economic Affairs and Energy
  - a) in the case of Section 6 subsection 1 in agreement with the Federal Foreign Office and the Federal Ministry of Finance; in the case of measures which affect the fields of movements of capital and payments or the movement of foreign assets and gold, consultations must be held with the Deutsche Bundesbank,
  - b) in the case of Section 7 in agreement with the Federal Foreign Office and the Federal Ministry of Transport and Digital Infrastructure,
  - c) in the case of Section 4 subsection 1 no. 4 in conjunction with Section 5 subsection 2 and an ordinance issued on the basis of these provisions; a prohibition or the issuing of orders relating to an acquisition within the meaning of Section 5 subsection 2 shall require the approval of the Federal Government,
  - d) in the case of Section 4 subsection 1 no. 1 in conjunction with Section 5 subsection 3 and an ordinance issued on the basis of these provisions in agreement with the Federal Foreign Office and the Federal Ministry of Defence and in the case of Section 4 subsection 1 no. 1 in conjunction with Section 5 subsection 3 no. 2 and an ordinance issued on the basis of these provisions also in agreement with the Federal Ministry of the Interior,
3. the Federal Ministry of Transport and Digital Infrastructure for orders in the field of movements of services in the field of transport pursuant to Section 4 subsections 1 and 2 in conjunction with an ordinance issued on the basis of this provision,
4. the Federal Ministry of Finance for orders in the field of movements of services in the field of insurance pursuant to Section 4 subsections 1 and 2 in conjunction with an ordinance issued on the basis of this provision,
5. the Federal Office for Agriculture and Food for orders in the field of movements of goods and services pursuant to Section 4 subsections 1 and 2 in conjunction with an ordinance issued on the basis of this provision in the context of the common organisation of the markets of the European Union in food and agriculture products.

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

### **Section 14**

#### **Administrative acts**

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

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

## **Section 15**

### **Nullity**

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

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

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

## **Section 16**

### **Judgement and compulsory enforcement**

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

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

## **Part 3**

### **Provisions on penalties, fines and surveillance**

## **Section 17**

### **Provisions on penalties**

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

1. by the Security Council of the United Nations under Chapter VII of the Charter of the United Nations or

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

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

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

1. acts for the secret service of a foreign power or
2. acts for gain or as a member of a gang which has been formed to repeatedly commit such criminal acts.

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

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

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

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

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

### **Section 18 Provisions on penalties**

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

1. violates a
  - a) prohibition on export, import, transit, transfer, sale, acquisition, delivery, provision, passing on, service or investment or
  - b) prohibition on the disposal of frozen money and economic assets

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

2. violates a licensing requirement for
  - a) the export, import, transit, transfer, a sale, an acquisition, a provision, a delivery, passing on, service or investment or
  - b) a prohibition on the disposal of frozen money and economic assets

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

(2) A prison sentence of up to five years or a fine shall be imposed on anyone who violates the Foreign Trade and Payments Ordinance by

1. exporting goods cited in it without a licence pursuant to Section 8 subsection 1, Section 9 subsection 1 or Section 78
2. exporting goods in violation of Section 9 subsection 2 sentence 2

3. transferring goods cited in it without a licence pursuant to Section 11 subsection 1 sentence 1
4. undertakes a trafficking and brokering transaction without a licence pursuant to Section 46 subsection 1, also in conjunction with Section 47 subsection 1, or without a licence pursuant to Section 47 subsection 2,
5. undertakes a trafficking and brokering transaction in violation of Section 47 subsection 3 sentence 3,
6. provides technical support without a licence in violation of Section 49 subsection 1, Section 50 subsection 1, Section 51 subsection 1 or subsection 2 or Section 52 subsection 1 or
7. provides technical support in violation of Section 49 subsection 2 sentence 3, Section 50 subsection 2 sentence 3, Section 51 subsection 3 sentence 3 or Section 52 subsection 2 sentence 3.

(3) The same punishment shall be imposed on anyone who violates Council Regulation (EC) No. 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds (OJ L 358 of 31 December 2002, p. 28), most recently amended by Regulation (EC) No. 1268/2008 (OJ L 338 of 17 December 2008), by

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

(4) The same punishment shall be imposed on anyone who violates Council Regulation (EC) No. 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (OJ L 200 of 30 July 2005, p. 1, L 79 of 16 March 2006, p. 32), most recently amended by Regulation (EU) No. 2016/2134 (OJ L 338 of 13 December 2016, p. 1) by

1. exporting goods cited in Article 3(1) sentence 1 in violation of that provision,
2. supplying technical assistance in violation of Article 3(1) sentence 3,
3. importing goods cited in Article 4(1) sentence 1 in violation of that provision,
4. accepting technical assistance in violation of Article 4(1) sentence 2,
5. placing in transit goods cited in Article 4a(1), Article 6a or Article 7d in violation of those provisions,
6. providing brokerage in violation of Article 4b,
7. providing or offering a training measure in violation of Article 4c,
8. exporting goods cited in Article 5(1) sentence 1 or Article 7b(1) sentence 1 without a licence pursuant to those provisions,
9. providing technical assistance without a licence pursuant to Article 7a(1) letter a or Article 7e(1) letter a or
10. providing brokerage without a licence pursuant to Article 7a(1) letter b or Article 7e(1) letter b.

To the extent that the provisions cited in sentence 1 refer to Annexes II, III or IIIa of Regulation (EC) No. 1236/2005, these Annexes shall apply in the version applicable at the time.

(5) The same punishment shall be imposed on anyone who violates Council Regulation (EC) No. 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ L 134 of 29 May 2009, p. 1, L 224 of 27 August 2009, p. 21) by

1. exporting dual-use goods without a licence pursuant to Article 3(1) or Article 4(1), (2) sentence 1 or (3),
2. exporting goods without a decision by the competent authority on whether a licence is required or without obtaining an licence from the competent authority in violation of Article 4(4) second half-sentence,
3. providing a brokering service without an authorisation pursuant to Article 5(1) sentence 1 or
4. providing a brokering service without a decision by the competent authority on whether authorisation is necessary or without obtaining an authorisation from the competent authority in violation of Article 5(1) sentence 2 second half-sentence.

To the extent that the provisions cited in sentence 1 refer to Annex I of Regulation (EC) No. 428/2009, this Annex shall apply in the relevant latest version. In the cases of sentence 1 no. 2, the exporter shall be equivalent to a person who undertakes the export via another individual if the person is aware that the dual-use goods are wholly or partly destined for a use within the meaning of Article 4(1) of Regulation (EC) No. 428/2009.

(5a) A prison sentence of up to one year or a fine shall be imposed on anyone who violates Regulation (EC) No. 1236/2005 by

1. displaying or offering for sale goods cited in Article 4d in violation of that provision or
2. selling or purchasing advertising space or advertising time in violation of Article 4e.

To the extent that the provisions cited in sentence 1 refer to Annex II of Regulation (EC) No. 1236/2005, this Annex shall apply in the version applicable at the time.

(6) Attempted perpetration shall be punishable.

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

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

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

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

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

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

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

### **Section 19 Provisions on fines**

(1) An administrative offence is committed by anyone who negligently undertakes an action cited in Section 18 subsection 1 to 4 or subsection 5.

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

(3) An administrative offence is committed by anyone who intentionally or negligently

1. violates an ordinance pursuant to
  - a) Section 4 subsection 1 or
  - b) Section 11 subsection 1 to 3 or subsection 4 or

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

2. violates an enforceable order pursuant to Section 7 subsection 1, 3 or subsection 4 or Section 23 subsection 1 or subsection 4 sentence 2,
3. in violation of Section 27 subsection 1 sentence 1 does not present material goods or does not present them correctly, fully or in time,
4. in violation of Section 27 subsection 3 does not present a declaration or does not present it correctly, fully or in time or
5. in violation of Section 27 subsection 4 sentence 1 does not present a consignment or does not present it correctly, fully or in time.

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

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

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

(5) An administrative offence is committed by anyone who intentionally or negligently violates a directly applicable provision contained in acts of the European Communities or the European Union published in the Official Journal of the European Communities or the European Union which serves to implement an economic sanction adopted by the Council of the European Union in the field of Common Foreign and Security Policy by

1. not transmitting information or not doing so correctly, fully or in time,

2. not submitting a prior notification or not submitting it correctly, fully, in the prescribed fashion, or in time,
3. not retaining a record of transactions or not retaining it for the prescribed period or not providing it or not providing it in time or
4. not informing a competent body or authority or not informing it in time.

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

## **Section 20**

### **Confiscation and extended forfeiture**

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

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

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

(3) (repealed)

## **Section 21**

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

(1) In the case of criminal and administrative offences pursuant to Sections 17 to 19 of this Act or pursuant to Section 19 subsection 1 to 3, Section 20 subsection 1 and 2, Section 20a subsection 1 to 3, each also in conjunction with Section 21, or pursuant to Section 22a subsection 1 no. 4, 5 and 7 of the War Weapons Control Act, the public prosecutor's office can have investigations carried out pursuant to Section 161 subsection 1 sentence 1 of the Code of Criminal Procedure by the main customs offices or the customs investigation offices. The administrative authority within the meaning of Section 22 subsection 3 sentence 1 can in the cases of sentence 1 also have investigations carried out by a different main customs office or the customs investigation offices.

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

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

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

## **Section 22**

### **Criminal and fine proceedings**

(1) To the extent that the local court has jurisdiction *ratione materiae* for criminal offences pursuant to Sections 17 and 18, the jurisdiction *ratione loci* shall rest with the local court

based in the district of the regional court which has jurisdiction *ratione loci*. The government of a *Land* can, by way of ordinance, regulate the jurisdiction *ratione loci* of the local court differently insofar as this appears appropriate considering the economic or transport situation, the structure of the administration or other local needs. The government of a *Land* can transfer this authorization to the justice authorities of the *Land*.

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

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

(4) Prosecution as an administrative offence shall not take place in the cases of a negligent committing of a violation within the meaning of Section 19 subsections 2 to 5 if the violation is uncovered by in-house controls and is notified to the competent authority and if appropriate measures are taken to prevent a violation due to the same reason. A notification pursuant to sentence 1 shall be deemed voluntary if the competent authority has not yet launched investigations into the violation. Otherwise this shall be without prejudice to Section 47 of the Act on Administrative Offences.

### **Section 23**

#### **General duty to provide information**

(1) The main customs office, the Deutsche Bundesbank, the Federal Office of Economics and Export Control (BAFA) and the Federal Office for Agriculture and Food can demand information needed to monitor compliance with this Act and the ordinances and orders issued on the basis of this Act and of acts of the Council or the Commission of the European Union in the field of foreign trade and payments legislation. For this purpose, they can require that the business documents are presented to them.

(2) The main customs office and the Deutsche Bundesbank can also conduct examinations on the premises of the persons obliged to provide information for the purpose cited in subsection 1; the Federal Office of Economics and Export Control (BAFA) and the Federal Office of Agriculture and Food can send authorised persons to the examinations. In order to undertake the examinations the officials of these bodies and their authorised persons may enter the business premises of the persons obliged to provide information. To this extent, the fundamental right contained in Article 13 of the German Basic Law is restricted.

(3) The officials of the Federal Office of Economics and Export Control (BAFA) may enter the business premises of the persons obliged to provide information in order to examine the preconditions for the issuing of licences pursuant to Section 8 subsection 2 or for the issuing of certificates pursuant to Section 9. To this extent, the fundamental right contained in Article 13 of the German Basic Law is restricted.

(4) If the documents pursuant to subsection 1 have been produced using a data-processing system, the administrative authority and the Deutsche Bundesbank may access the stored data in the course of an examination and use the data-processing system to examine these documents. In the course of an examination, they can also require that the data be evaluated by automated means pursuant to their requirements or that the stored documents be made available to them on a data-storage medium which can be processed by computer. To this end, it is necessary to ensure that the stored data are available throughout the statutory retention periods and that they can be rendered readable without delay and can be evaluated by computer without delay. The persons obliged to provide information must support the administrative authority and the Deutsche Bundesbank when they exercise their powers pursuant to sentences 1 and 2 and must bear the costs.



(5) Anyone who participates directly or indirectly in foreign trade and payments transactions shall be obliged to provide information.

(6) The person obliged to provide information can refuse to furnish information on questions the answer to which would expose himself or a relative, as specified in Section 383 subsection 1 nos. 1 to 3 of the Code of Civil Procedure, to the danger of prosecution for a criminal or an administrative offence.

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

#### **Section 24**

##### **Transmission of information by the Federal Office of Economics and Export Control (BAFA)**

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

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

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

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

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

#### **Section 25**

##### **Automated retrieval procedure**

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

(2) When the retrieval procedure is set up, the German Customs Investigations Office and the Federal Office of Economics and Export Control (BAFA) shall stipulate in writing the reason and purpose for the retrieval procedure and the nature of the data to be transmitted and the technical and organisational measures required by Section 9 of the Federal Data Protection Act.

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

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

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

## **Section 26**

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

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

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

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

1. the interest in the use of the transmitted data substantially outweighs the interest of the affected party in confidentiality and
2. the investigative purpose of the criminal proceedings cannot be endangered.

## **Section 27**

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

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

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

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

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

(5) The customs authorities shall survey compliance with

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

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

## **Section 28**

### **Costs**

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

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

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