

**Foreign Trade and Payments Act  
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## **Part One Legal Transactions and Acts**

### **Chapter I General Provisions**

#### **Section 1 Principles**

- (1) The trade in goods, services, capital assets, payment transactions and any other types of trade with foreign economic territories, as well as the trade in foreign valuables and gold between German residents (foreign trade and payments) is, in principle, not restricted. It is subject to the restrictions contained in this Act, or laid down thereunder by statutory order.
- (2) Provisions contained in other acts and statutory orders, international agreements approved by legislative bodies in the form of a federal law, as well as legal provisions made by organs of international institutions to which the Federal Republic of Germany has transferred sovereign jurisdiction, shall remain unaffected.

#### **Section 2 Nature and Scope of Restrictions and Obligations to Act**

- (1) Where restrictions are permitted under this Act, it may be laid down through statutory order that legal transactions and acts, in general or under specific conditions, are either
  1. subject to licensing or
  2. prohibited.
- (2) The Federal Ministry of Economics and Technology, in agreement with the Federal Foreign Office and the Federal Ministry of Finance, may decree the necessary restrictions on legal transactions or acts, in order to avert a possible danger, which may arise in certain cases, for the legally protected rights referred to in section 7 para. 1 of this Act. In case of measures related to the trade in capital assets, payment transactions or the trade in foreign valuables and gold, agreement with the German Federal Bank shall be made. The decree shall expire six months after its enactment, unless the restriction is laid down through statutory order.
- (3) Restrictions shall be limited in nature and scope to the extent necessary to achieve the objective stated in the licence. They shall be framed in a way hampering the freedom of economic activity as little as possible. Restrictions may affect existing agreements only if the desired objective is in substantial jeopardy.
- (4) Restrictions shall be revoked as soon as, and insofar as the reasons warranting their imposition do no longer apply.
- (5) Where independent obligations to act may be substantiated under this Act, paragraphs 3 and 4 above shall apply mutatis mutandis.

### Section 3 **Granting of Licences**

- (1) Where legal transactions or acts are subject to licensing under a provision of this Act or under a statutory order issued on the basis of this Act, the licence shall be granted if it is to be expected that undertaking the legal transaction or act will not endanger the objective of the provision, or will endanger it only insignificantly. In other cases, the licence may be granted if the national economic interest in the legal transaction or act outweighs its adverse effect on the objective of the provision concerned.
- (2) The granting of licences may be made dependent on material and personal conditions, in particular on the reliability of the applicant. The same applies to certificates issued by the Federal Office of Economics and Export Control (BAFA) stating that the export is not subject to licensing. Where the objective of a provision is such as to enable the granting of a licence on a limited scale only, the licence shall be granted in a way using the available scope in the best interest of the national economy. Community residents whose business is particularly affected by a given restriction may be afforded preferential consideration.

### Section 4 **Definitions**

- (1) For the purposes of this Act, the following definitions shall apply:
  1. economic territory:  
the area of application of this Act;  
the Austrian territories Jungholz and Mittelberg are considered part of the economic territory;
  2. foreign economic territories:  
all areas outside the economic territory;  
in case of the transfer of goods and electric power, the territory of Büsingen is considered part of foreign economic territories;
  3. Community territory:  
the customs territory of the European Communities under Article 3 of Council Regulation (EEC) No. 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ EC No. L 302, p. 1);
  4. third countries:  
all areas outside the Community territory;
  5. residents:  
natural persons having their domicile or habitual abode in the economic territory, legal persons and partnerships whose registered office or seat of management is in the economic territory; branches maintained in the economic territory by non-residents are considered to be residents if they have their management and accounting functions there; permanent establishments maintained in the economic territory by non-residents are considered to be residents if they have their management there;
  6. Community residents:  
persons having their residence in the European Communities under Article 4 no. 2 of Regulation (EEC) No. 2913/92;

7. non-residents:  
natural persons having their domicile or habitual abode in foreign economic territories, legal persons and partnerships whose registered office or seat of management is in foreign economic territories; branches maintained in foreign economic territories by residents are considered to be non-residents if they have their management and accounting functions there; permanent establishments maintained in foreign economic territories by residents are considered to be non-residents if they have their management there.
8. Community non-residents:  
all other persons than Community residents.

(2) For the purposes of this Act, the terms listed below shall have the following meaning:

1. foreign assets:  
immovable assets in foreign economic territories; accounts in Euro receivable from non-residents; means of payment, receivables and securities in foreign currencies;
2. goods:  
movable, tradable objects and electric power, with the exception of securities and means of payment;
3. items:  
goods, including data processing programmes (software) and technology; technology also comprises documents for the production of goods, including documents enabling the production of their components only;
4. export:  
the departure of objects, goods and electric power from the economic territory to foreign economic territories, including the intangible transmission of data processing programmes and technology by data transmission or telecommunications, unless otherwise provided in a statutory order issued on the basis of this Act;
5. transfer:  
export from the economic territory to other Member States of the European Union;
6. import:  
the entry of objects and electric power from foreign economic territories into the economic territory, unless otherwise provided in this Act, in an Annex to this Act or in a statutory order issued thereunder; when objects and electric power are brought from third countries to a free zone or are placed under suspensive procedure, it is considered an import only if they are used, consumed, processed in the free zone or are released into free circulation;
7. transit:  
the transport of objects from foreign economic territories through the economic territory without their entering the market of the economic territory; transit also means a customs procedure for the transport of objects of free circulation from another Member State of the European Communities through the economic territory;
8. gold:  
fine gold and gold alloys in the form of bars or semi-finished material as well as gold coins which had been demonetized or withdrawn from circulation and have no recognised numismatic value;

9. securities:

all securities within the meaning of section 1 para. 1 of the Act on the Safe Custody and Purchase of Securities (Securities Deposit Act) of 4 February 1937 (Reich Law Gazette I, p. 171); shares in a collective security deposit or in a collective debt register claim are also considered to be securities; rights to the delivery or allotment of securities are equivalent to securities;

10. domestic securities:

securities issued by a resident, or prior to 9 May 1945 by a person whose domicile was in the territory of the German Reich as constituted on 31 December 1937;

11. foreign securities:

securities issued by a non-resident, provided that they are no domestic securities as defined in paragraph 8 above.

Section 4a

**Branches and Permanent Establishments**

(1) For the purposes of this Act,

1. resident branches and permanent establishments maintained by non-residents as well as non-resident branches and permanent establishments maintained by residents are regarded as legally independent; several resident branches and permanent establishments maintained by one and the same non-resident are considered to be a single resident,
2. acts performed by or towards such branches or permanent establishments are considered to be legal transactions, insofar as such acts between natural persons or legal persons or partnerships would be legal transactions.

(2) Statutory orders issued under an authorisation contained in this Act may prescribe that

1. resident branches and permanent establishments maintained by one and the same non-resident are each considered to be separate residents, notwithstanding paragraph 1 no. 1 second half of the sentence,
2. several non-resident branches and permanent establishments of one and the same resident are considered to be a single non-resident, notwithstanding paragraph 1 no. 1 first half sentence,
3. branches and permanent establishments are not considered to be residents or non-residents, notwithstanding section 4 para. 1 nos. 3 and 4,

where this is necessary to achieve the objective stated in the authorisation.

Section 4b

**Legal Transactions for the Accounts of Non-residents**

Statutory orders issued under an authorisation contained in this Act may prescribe that

1. restrictions, imposed by a statutory order issued under this Act, on legal transactions undertaken by non-residents or between non-residents and residents shall also apply to legal transactions involving the direct or indirect conclusion between a resident and

- a third party, for the accounts, or on behalf, of a non-resident, of a legal transaction which would be subject to restrictions if concluded between non-residents and residents or by non-residents,
2. acting for the accounts, or on behalf of a non-resident within the meaning of no. 1 above shall be notified by the resident to the third party or via another person participating in the conclusion of the legal transaction before the transaction is carried out,
  3. the legal transaction towards the third party shall be subject to those relevant restrictions which would apply if it had been undertaken by a non-resident, provided that the third party has received the notification under no. 2 above or has been informed in some other way, before the legal transaction is carried out, of the action for the account, or on behalf of a non-resident,

where this is required to achieve the purpose determined in the authorisation.

#### Section 4c

### **Legal Transactions for the Accounts of Residents**

Statutory orders issued under an authorisation contained in this Act may also prescribe that restrictions imposed by a statutory order issued under this Act on legal transactions undertaken between residents and non-residents shall also apply to legal transactions involving the direct or indirect conclusion between a non-resident and a third party, for the accounts, or on behalf of a resident, of a legal transaction which, if concluded between residents and non-residents, would be subject to restrictions, where this is necessary to achieve the objective stated in the authorisation.

## **Chapter II**

### **General Scope for Restrictions**

#### Section 5

### **Fulfilment of International Agreements**

Legal transactions and acts in foreign trade may be restricted, and existing restrictions may be repealed, to permit the fulfilment of international agreements approved by the legislative bodies in the form of a federal law.

#### Section 6

### **Protection against Adverse Influences from Foreign Economic Territories**

- (1) Legal transactions and acts in foreign trade and payments may be restricted in order to prevent or counteract adverse effects on the economy or its individual branches in the economic territory if such consequences are impending or arise as a result of measures taken in foreign economic territories which
  1. restrict, distort or prevent competition, or
  2. lead to restrictions of economic transactions with the economic territory.
- (2) Legal transactions and acts in foreign trade may also be restricted in order to prevent or counteract effects on the economic territory of conditions prevailing in foreign economic

territories which are incompatible with the free and constitutional order of the Federal Republic of Germany.

## Section 7 Protection of Security and External Interests

- (1) Legal transactions and acts in foreign trade may be restricted in order to
1. guarantee the vital security interests of the Federal Republic of Germany,
  2. prevent a disturbance of the peaceful coexistence between nations, or
  3. prevent a major disruption of the foreign relations of the Federal Republic of Germany
  4. to guarantee the public order or security of the Federal Republic of Germany as defined by Articles 46 and 58 para. I of the EC Treaty.
- (2) According to paragraph 1 above, the following may be restricted in particular
1. the export or transit of
    - a) weapons, ammunition and military equipment,
    - b) objects which are useful in the development, production or use of weapons, ammunition and military equipment, or
    - c) constructional drawings and other production documents for the objects listed in letters a) and b) above,in particular, if the restriction serves the implementation of export control agreed in international co-operation;
  2. the export of objects which are destined for the conduct of military actions;
  3. the import of weapons, ammunition and military equipment;
  4. legal transactions on industrial property rights, inventions, manufacturing processes and expertise relating to the goods and other objects listed under no. 1 above.
  5. legal transactions on the purchase of resident companies which
    - a) produce or develop war weapons and other military equipment, or
    - b) produce cryptographic systems admitted for the transmission of governmental classified information by the Federal Office for Information Security Technology with the company's approval,or legal transactions on the acquisition of shares in such companies, in order to guarantee the vital security interests of the Federal Republic of Germany; this applies in particular if the political and security interests of the Federal Republic of Germany or the military security precautions are jeopardized as a result of the purchase,
  6. legal transactions on the purchase of resident companies or of shares in such companies by a non-Community purchaser if the public order or security of the Federal Republic of Germany under paragraph 1 item 4 above is jeopardized as a result of the purchase; this presupposes the existence of an actual or sufficiently severe threat affecting a basic interest of the society. Non-Community purchasers from the Members States of the European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland) are considered equal to Community resident purchasers.
- (3) Legal transactions and acts of German nationals in foreign economic territories, which are related to goods and other objects as per paragraph 2 no. 1 above, including their development and production, may also be restricted under the objectives set out in paragraph 1, if the German national



1. holds an identification document of the Federal Republic of Germany or
2. would be obliged to possess an identity card if he had a residence in the area of application of this Act.

This applies in particular when the restriction serves to prevent the proliferation of goods and other objects as per paragraph 2 no. 1 above, which was agreed in international co-operation.

### **Chapter III Trade in Goods**

#### **Section 8 Export of Goods**

- (1) The export of goods may be restricted in order to prevent or counteract a threat to the satisfaction of the vital needs in the economic territory, or in parts thereof, in the interest of the national economy. Restrictions are admissible only if the needs cannot be satisfied in another way, or in time, or can be satisfied only with disproportionate means.
- (2) The export of food and agricultural products may be restricted in order to prevent or counteract considerable disturbance of exports through the delivery of low-quality products. In this connection minimum requirements for the quality of products may be prescribed by statutory order.
- (3) The export of goods which have been brought into the economic territory may be restricted in the context of cooperation in an international economic organisation in order to ensure the effective implementation of the Member States' regulations concerning the import of goods from territories outside the organisation.

#### **Section 9 Export Contracts**

- (1) In the case of legal transactions by which a resident undertakes to supply goods to foreign economic territories (export contract), the stipulation of terms of payment or delivery that are more favourable for the buyer than the customary commercial terms may be restricted in order to prevent or counteract a substantial disturbance of exports to the purchasing country.
- (2) With due regard to the external economic interests of the public, the exporter shall fix prices in export transactions in such a way as to avoid adverse effects, in particular defensive measures by the purchasing country or country of destination.

#### **Section 10 Import of Goods**

- (1) The import of goods is basically free. A licence shall only be required if indicated in the Import Control List (Annex). Furthermore the Import Control List specifies all goods the import of which, in accordance with a regulation under sect. 26, requires Import Control Declarations, the prior Community surveillance of imports or the presentation of

certificates of origin, or goods the import of which requires an Import Licence in accordance with a common market organisation or trade regulation.

- (2) The Import Control List may be amended by statutory order.
- (3) Import restrictions may only be imposed to the extent necessary to protect the interests specified in sections 5 to 7 above.
- (4) A statutory order may provide that imports are not subject to licensing
  1. if the goods do not enter the market of the economic territory, or
  2. if a threat to the interests to be protected under paragraph 3 above is precluded by limiting the quantity or value of the goods, or by imposing restrictions on their use, or in any other way.

This applies, in particular, to imports into a free zone, for inward processing (suspensive procedure), to imports to be placed under customs warehousing procedure, to tourist or local border traffic, ships supplies, imports not intended for commercial use and imports of property through immigration and inheritance.

#### Section 11

#### **Delivery Periods for Imports not Subject to Licensing**

In case of imports not subject to licensing, the agreement and use of delivery periods may be restricted in order to protect the interests referred to in section 10 para. 3 above.

#### Section 12

#### **Import Subject to Licensing**

- (1) Import licences shall be granted for goods the import of which is subject to licensing after taking due account of commercial and other economic policy requirements as far as this is compatible with the protection of the interests referred to in section 10 para. 3 above.
- (2) When granting import licences the competent authorities shall act in accordance with the guidelines issued by the Federal Ministry of Economics and Technology and the Federal Ministry of Food, Agriculture and Consumer Protection in mutual agreement, and in consultation with the Federal Ministry of Finance and the Deutsche Bundesbank (German Federal Bank). On the basis of these guidelines the authorities responsible for granting import licences shall announce in the Federal Gazette the details to be observed in licence applications (public tender).

#### Section 13

#### **Restrictions on the Use of Imported Goods**

Where the import of goods is permitted or approved on the condition that the goods may be used only in a specific manner, the seller has to verifiably communicate this restriction upon the sale of the goods to each subsequent buyer. The importer and the buyer have to use the goods in the specified manner only.

#### Section 14

## **Ensuring the Import of Vital Goods**

Legal transactions with non-residents relating to goods the purchase of which has been agreed between countries to satisfy vital needs in the economic territory, or parts thereof, may be restricted in order to ensure the import of such goods and their retention in the economic territory. Legal transactions relating to the processing and finishing of such goods in foreign economic territories may be restricted for the same purpose.

### **Chapter IV Service Transactions**

#### Section 15

#### **Processing of Goods for Foreign Account**

Legal transactions whereby a resident undertakes to process or finish goods of a non-resident in the economic territory (processing of goods for foreign account) may be restricted in order to counteract any threat to the satisfaction of vital needs in the economic territory, or in parts thereof. Section 8 para. 1 sentence 2 of this Act shall apply mutatis mutandis.

#### Section 16

#### **Production and Distribution Rights**

Legal transactions concerning the granting to a foreign economic territory of rights to the production and distribution of products the origin of which is connected with a particular geographic area may be restricted if the interests of the area of origin are substantially affected. This also applies if such production and distribution rights are brought into a company in a foreign economic territory.

#### Section 17

#### **Audio-visual Works**

Legal transactions referring to

1. the acquisition of presentation and broadcasting rights to audio-visual works of non-residents, if the works are intended for display or distribution in the economic territory, and
2. the production of audio-visual works in co-operation with non-residents

may be restricted in order to preserve for the film industry of the economic territory sufficient scope for exploitation of the domestic market. Restrictions are only permissible if the film industry of the economic territory will suffer from or be threatened by serious damage without them, and if such damage has to be averted in the public interest.

#### Section 18

#### **Maritime Shipping**

Where international maritime shipping is impaired by measures which impede the competitive participation of the German merchant fleet in the transportation of goods, the conclusion of freight contracts on the transportation of goods by sea-going ships under a

foreign flag and the chartering of such vessels by residents may be restricted in order to counteract considerable adverse effects on the economic situation of the German merchant fleet.

### Section 19 **Civil Aviation**

Where international air traffic is impaired by measures which impede the competitive participation of German aircraft in the transportation of persons and goods, the conclusion of contracts on the transportation of persons and goods by aircraft not entered in the German aircraft register, and the chartering of such aircraft by residents may be restricted in order to counteract considerable adverse effects on the economic situation of German civil aviation.

### Section 20 **Inland Waterway Transport**

Legal transactions between residents and non-residents the object of which is

1. to charter inland waterway vessels not entered in an inland shipping register in the economic territory,
2. to transport goods on such inland waterway vessels, or
3. to tow by means of such inland waterway vessels

in freight traffic within the economic territory may be restricted in order to prevent a disturbance of the order to be observed among carriers in the public interest.

### Section 21 **Insurance against Losses**

Legal transactions relating to hull insurance, protection and indemnity insurance, transport and aviation insurance between residents and insurance companies established in a foreign economic territory, as a result of which resident companies of these insurance branches are hampered from carrying out their business, may be restricted in order to counteract considerable adverse effects on the economic situation of the insurance branches concerned.

### **Chapter V Capital Transactions**

Section 22 (repealed)

Section 23 (repealed)

### **Chapter VI Gold**

Section 24 (repealed)

### **Part II Supplementary Provisions**

## Section 25 **Deutsche Bundesbank**

The restrictions contained in this Act or prescribed by statutory order on the basis of this Act do not apply to legal transactions and acts undertaken by the Deutsche Bundesbank in the context of its functions, or to legal transactions and acts in which the German Federal Bank is a partner.

## Section 26 **Rules of Procedure and Reporting Regulations**

(1) Procedural regulations governing the conduct of legal transactions or acts in foreign trade may be issued in the form of a statutory order to the extent necessary to implement this Act or rules of the type referred to in sentence 2, or to examine the legal transactions or acts as to their legitimacy within the meaning of this Act or of such rules. Rules within the meaning of sentence 1 are

1. the provisions of the treaties establishing the European Communities,
2. provisions in treaties, including the appertaining documents and memoranda, which came about as a result of the treaties referred to in no. 1, or which were concluded in order to extend, supplement or implement the latter treaties, or to establish an association, a preference or a free trade zone, and which were published and announced as having come into force in the Federal Law Gazette, in the Federal Gazette or Official Journal of the European Communities,
3. legal instruments adopted by the Council or Commission of the European Communities on the basis or in the context of the treaties referred to in nos. 1 and 2 above.

Furthermore, recording and record retention requirements may be prescribed by statutory order, where necessary to monitor the legal transactions or acts as to their legitimacy under this Act, or of rules of the type specified in sentence 2, or in compliance with reporting requirements in accordance with paragraphs 2 and 3, and where they do not yet exist under provisions of commercial or tax legislation.

(2) It may be decreed by statutory order that legal transactions and acts in foreign trade, particularly claims and liabilities arising therefrom, as well as investments and payments made or received, must be reported, citing the legal grounds, if this is necessary in order

1. to determine whether the circumstances for the lifting, relaxation or imposition of restrictions exist,
2. to draw up the balance of payments of the Federal Republic of Germany on a regular basis,
3. to guarantee the safeguarding of foreign economic and political interests,
4. to fulfil the obligations arising from international agreements,
5. (repealed).

(3) It may also be decreed by statutory order that the level and selected items of the composition of assets owned by residents in foreign economic territories, and by non-residents in the economic territory must be reported to the extent necessary to achieve the objectives referred to in paragraph 2 nos. 1 to 4. Assets within the meaning of sentence 1 also include indirect participation in a company. If the reportable assets include a direct or indirect participation in a company it may be decreed that the level and

selected items of the composition of assets owned by the company in which the stake is held shall be reported as well.

- (4) The nature and scope of reporting requirements shall be limited to the extent necessary to achieve the objective specified in paragraphs 2 and 3 above. Sections 9, 15 and 16 of the Federal Statistics Act apply mutatis mutandis in the cases referred to in paragraph 2 nos. 1 to 4 and in paragraph 3.

#### Section 26a

### **Specific Reporting Requirements**

- (1) It may be decreed by statutory order that legal transactions and acts relating to goods and technologies in the nuclear, biological or chemical sections of Part I of the Export Control List (Annex AL to the Foreign Trade and Payments Regulation) must be reported to the Federal Office of Economics and Export Control (BAFA), where this is necessary to achieve the objectives referred to in sections 5 and 7 para. 1, in particular to monitor foreign trade transactions. The Federal Office of Economics and Export Control (BAFA) may counter-check the information, collected on the basis of a statutory order pursuant to sentence 1, with other data stored for the purposes mentioned in sentence 1.
- (2) The information gathered on the basis of a statutory order under paragraph 1 shall be kept secret. It may be communicated to the Federal Ministry of Economics and Technology and to the authorities responsible for the surveillance of foreign trade transactions, where this is necessary to achieve the objectives specified in paragraph 1. They must not be used for purposes other than those referred to in paragraph 1 above. Section 45 of this Act shall remain unaffected.
- (3) The nature and scope of the reporting requirements shall be limited to the extent necessary to achieve the objectives specified in paragraph 1 above.

#### Section 27

### **Issue of Statutory Orders**

- (1) The Federal Government shall issue the statutory orders provided for under this Act; however, statutory orders serving to meet obligations from international agreements (section 5) shall be issued by the Federal Ministry of Economics and Technology after consulting the Federal Foreign Office and the Federal Ministry of Finance. The statutory orders shall not require the approval of the Bundesrat (Federal Council). However, the Bundesrat's approval is required for statutory orders pursuant to section 28 para. 3 sentence 1. In case of provisions affecting capital and payment transactions or transactions in foreign assets and gold, the Deutsche Bundesbank consulted.
- (2) Immediately after promulgation, the statutory orders shall be communicated to the Bundestag (Parliament) and, if the Bundesrat's approval is not required, also to the Bundesrat. The Bundesrat may comment to the Bundestag within four weeks. The statutory orders shall be repealed immediately if the Bundestag so demands within four months after their promulgation. Sentences 1 to 3 shall not apply to statutory orders whereby the Federal Government or the Federal Ministry of Economics and Technology has lifted or imposed restrictions on trade in goods with foreign economic territories in exercising rights or fulfilling obligations from international agreements approved by the legislative bodies in the form of a federal act.

## Section 28 Issue of Administrative Orders

- (1) The issue of administrative orders and the receipt of reports in accordance with this Act and of statutory orders issued thereunder, as well as on the basis of acts of law issued by the Council or Commission of the European Communities in the area of foreign trade legislation is the responsibility of authorities designated by the Laender governments, unless otherwise provided in the following paragraphs.
- (2) Sole responsibility is exercised by
1. the Deutsche Bundesbank in the field of capital and payment transactions as well as trade in foreign assets and gold pursuant to section 2 para. 2, sections 5 to 7, unless otherwise provided in the following paragraphs;
  2. the Federal Ministry of Economics and Technology after consulting the Federal Foreign Office and the Federal Ministry of Defence in the case of section 7 para. 2 no. 5. In the case of section 7 para. 2 no. 5 second bullet-point, additional agreement with the Federal Ministry of the Interior shall be required.
- (2a) The Federal Office of Economics and Export Control (BAFA) shall have the sole responsibility for the trade in goods and services pursuant to sections 5, 6, 7 to 16 in the context of the common market organisations of the European Communities for tobacco leaf, flax and hemp.
- (2b) The Federal Ministry of Food, Agriculture and Consumer Protection, acting in agreement with the Federal Ministry of Economics and Technology, is authorised to assign to the Federal Agency for Agriculture and Food, by statutory order not requiring the Bundesrat's approval, the sole responsibility for trade in goods and services under sections 5, 6, 7 to 16, in products of the food industry and agricultural products other than those referred to in paragraph 2a above, in products in respect of which rules of the nature specified in section 26 para. 1 sentence 2 have been adopted to supplement or safeguard a common market organisation. Section 27 shall not be applicable.
- (3) Where a centralised processing is required for granting licences in certain fields of foreign trade, the following responsibilities may be prescribed by statutory order, notwithstanding the provisions of paragraph 1:
1. the Federal Office of Economics and Export Control (BAFA) in the field of foreign trade in goods and services under sections 5 to 17 and 21, as well as in the purview of acts of law issued by the Council or Commission of the European Communities within the meaning of paragraph 1,
  2. (repealed)
  3. the Federal Ministry of Transport, Building and Urban Development in the field of services in the transport sector under sections 5 to 7 and 18 to 20.

The responsibilities of the Federal Ministry of Transport, Building and Urban Development may be delegated, in accordance with no. 3 above, to subordinate authorities by statutory order.

## Section 29

## **Authority to Issue Directives**

The federal government is authorised to issue individual directives to the supreme Laender authorities concerning the implementation of this Act and of the statutory orders issued thereunder in instances which are of considerable importance in terms of scale, or in which the decision is of fundamental nature. The directives may be issued only to ensure the equal treatment of legal transactions and acts or to bring about an equal evaluation of infringements.

### **Section 30 Licences**

- (1) Licences may be provided with collateral clauses. The licences are not transferable unless otherwise provided therein.
- (2) The licence, the denial of an application for the granting of a licence, the withdrawal and revocation of a licence shall be made in writing.
- (3) Objections to and appeals against a decision shall have no suspending effect.

### **Section 31 Legal Invalidity**

- (1) A legal transaction that is undertaken without the necessary licence has no legal force. It becomes valid from the date it was undertaken through subsequent approval. The retroactive effect does not affect rights to the objects of the legal transaction acquired by third parties prior to its licensing.
- (2) A legal transaction in connection with the acquisition of a resident company, which is subject to reporting under section 7 para. 1 and 2 no. 5 in connection with an authorisation by the federal government to prohibit the acquisition within a given period of time, is provisionally ineffective up to the expiry of this period. The legal transaction will become effective after the expiry of the period unless the authority takes another decision before of the deadline.
- (3) The coming into legal effect of a legal transaction on the acquisition of a resident company under the law of obligations, which is subject to auditing rights under section 7 para. 1 and 2 no. 6 in connection with an authorisation of the Federal Ministry of Economics and Technology, to interdict the acquisition within a certain period of time with the approval of the federal government, is, up to the end of the entire auditing procedure, subject to the condition subsequent that the Federal Ministry of Economics and Technology prohibits the acquisition within the given time limit.

### **Section 32 Judgement and Enforcement**

- (1) Where performance by a debtor requires a licence, a judgement may be rendered prior to the granting of the licence, provided that the operative part of the judgement includes a reservation to the effect that the performance or enforcement must not take place until the licence has been granted. This applies accordingly to other titles for execution if enforcement may be made only by virtue of an official copy of the title. Civil arrest and



provisional injunction serving merely to secure the underlying claim may be issued without reserve.

- (2) Where performance by a debtor requires a licence, enforcement is only permissible if and as far as the licence has been granted. Where the purchase or sale of assets is subject to licensing, this shall also apply to the purchase and sale by way of enforcement.

### **PART III**

#### **Provisions Relating to Penalties, Fines and Surveillance**

##### **Section 33**

##### **Regulatory Offences**

- (1) A regulatory offence is deemed to be committed by anyone who intentionally or negligently violates a statutory under sect. 2 para. 1 in connection with sect. 5 or sect. 7 para. 1 or 3 sentence 1 based on such a statutory order, where the statutory order refers to this fine provision for certain offences and the action is not punishable as a criminal offence under sect. 34 para. 4 no. 1, or subject to punishment under sect. 34 para. 1 no. 1 or para. 6 no. 3 .
- (2) A regulatory offence is deemed to be committed by anyone who intentionally or negligently
1. disobeys an enforceable order under section 2 para. 2 sentence 1,
  - 1a. imports goods without the licence required under section 10 para. 1 sentence 2,
  2. contrary to section 13 sentence 1, fails to inform the purchaser about a restriction on the use of a commodity and, thus, causes its use contrary to the restriction,
  3. as importer or acquirer of the commodity, uses it contrary to the restriction (section 13 sentence 2), or
  4. violates an enforceable order under section 30 para. 1 sentence 1.
- (3) A regulatory offence is also deemed to be committed by anyone who intentionally or negligently violates a statutory order issued in conjunction with section 2,
1. under sections 4b, 4c, 6, 8 para. 3, sect. 9 para. 1, sections 11, 14 to 21 or
  2. under section 8 para. 1 or 2

where it refers to this administrative fine provision for a certain offence.

- (4) A regulatory offence is also deemed to be committed by anyone who intentionally or negligently violates restrictions on foreign trade laid down in acts of law of the European Communities, where a statutory order under sentence 2 refers to this fine provision for a certain offence and the action is not punishable as a criminal offence under sect. 34 para. 4 no. 2. These regulatory offences subject to fines under sentence 1 above may be defined by statutory order, where this is required for the implementation of the acts of law of the European Communities.
- (5) A regulatory offence is also deemed to be committed by anyone who
1. in fact, makes or uses false or incomplete statements in order to obtain by fraud for himself or for any other person a licence or a certificate required under this Act or under a statutory order issued to implement this Act,

2. intentionally or negligently violates a statutory order issued under sections 26 or 26a, where it refers to this fine provision for a given offence,
  3. contrary to section 44, fails to provide information, or provides them incompletely or incorrectly, fails to submit business records, or refuses to permit examination, or contrary to section 46 para. 1, fails to explain the facts specified therein, or refuses to permit an investigation or audit, or contrary to section 46 para. 2, fails to make a declaration or, contrary to section 46 para. 3 fails to present a consignment, or
  4. prevents or impedes the review (section 44) of circumstances pertinent to this Act or a statutory order issued to implement this Act, by failing to maintain or maintain properly, or failing to keep in safe custody, or concealing books and records which have to be maintained or kept in safe custody in accordance with the provisions of commercial and tax legislation.
- (6) In the cases of paragraphs 1, 2, 3, 4 and 5 no. 1, the regulatory offence may be punished by a fine up to € 500,000, in the cases of paragraph 5 nos. 2 to 4, by a fine up to € 25,000.
- (7) The attempt to commit a regulatory offence may be punished in the cases of paragraphs 1, 2 no. 1a, paragraph 3 no. 2 and paragraph 4.

#### Section 34 **Criminal Offences**

- (1) A prison sentence of up to five years or a fine may be imposed on anyone who exports or transfers without a licence
1. goods referred to in Part I Section A, or
  2. goods referred to in Part I Section C, Category 0, Category 1 items 1C350, 1C351, 1C352, 1C353, 1C354, Category 2 items 2B350, 2B351 or 2B352
- of the Export Control List (Annex AL to Foreign Trade and Payments Regulation). Subject to punishment shall also be anyone who exports goods specified in sentence 1 no. 2 above from another EU Member State without the required licence if the exporter is established in the economic territory.
- (2) A prison sentence of up to five years or a fine shall be imposed on anyone who perpetrates with intent an act referred to in section 33 para. 1 or 4, which is likely to threaten
1. the external security of the Federal Republic of Germany,
  2. the peaceful coexistence between nations or
  3. the foreign relations of the Federal Republic of Germany.
- provided that the deed is not punishable as per paragraphs 1 or 4.
- (3) A punishment shall also be imposed on anyone who, in the cases of paragraphs 1 and 2 above, encourages the export or transfer by providing the goods.
- (4) A prison sentence of six months up to five years shall be imposed on anyone who
1. violates a statutory order under sect. 2 para. 1 in conjunction with sect. 5 or 7 para. 1 or 3 sentence 1 which serves the implementation of economic sanctions imposed by

- a) the Security Council of the United Nations in accordance with Chapter VII of the United Nations Charter, or
- b) the Council of the European Union in the field of the common foreign and security policy

where the statutory order refers to this penal provision for a given offence and the act is not subject to punishment as per paragraph 6 no. 3, or

2. acts contrary to the legally binding prohibition of export, import, transit, transfer, sale, delivery, provision, transmission, service, investment, assistance or circumvention laid down in an act of law of the European Communities which was published in the Federal Gazette and serves the implementation of economic sanctions adopted by the European Union Council in the field of the common foreign and security policy
  3. acts contrary to a binding provision laid down in an act of law of the European Communities which requires an authorisation for export, import, transit, transfer, sale, delivery, provision, transmission, service, investment or assistance and which was published in the Federal Gazette and serves the implementation of economic sanctions imposed by the European Union Council in the field of the common foreign and security policy.
- (5) In the cases of paragraphs 1, 2 and 4 the attempt shall be punishable.
- (6) A prison sentence of no less than two years will be imposed on anyone who
1. commits an act described in paragraph 1 or 2 above thereby
    - a) causing the risk of a serious detriment to the external security of the Federal Republic of Germany,
    - b) disturbing the peaceful co-existence of nations, or
    - c) considerably disturbing the foreign relations of the Federal Republic of Germany,
  2. commits an act described in paragraphs 1, 2 or 4 and acts professionally or as a member of a gang that has been formed for the continuous committal of such criminal offences, with the assistance of another member of the gang
  3. commits an act described in paragraph 1 sentence 1 no. 1 and thereby violates an export prohibition, published in the Federal Gazette, on goods referred to in
    - a) a Resolution of the United Nations Security Council under Chapter VII of the United Nations Charter, or
    - b) an act of law of the European Union in the field of the common foreign and security policy
- or
4. perpetrates an act referred to in paragraph 4 above which is likely to threaten
    - a) the external security of the Federal Republic of Germany
    - b) the peaceful coexistence between nations or
    - c) the foreign relations of the Federal Republic of Germany.
- (7) Where the offender acts negligently in the cases of paragraphs 1, 2 or 4, the punishment shall be a prison sentence of up to three years or a fine.
- (8) Anyone who acts on the basis of a licence he obtained either by threat, bribery or by joint action of an office-holder with the applicant with the aim to intentionally circumvent the

licensing conditions, or by fraud or as a result of false or incomplete information, acts without a licence within the meaning of paragraph 1 above. Sentence 1 shall apply accordingly in the cases of paragraphs 2 and 4 above.

### Section 35 **Offences of German Nationals Abroad**

Section 34 shall apply independently of the *lex loci delicti commissi*, also abroad if the perpetrator is a German national.

### Section 36 **Confiscation**

- (1) Where a regulatory offence under section 33 or a criminal offence under section 34 was committed, the following objects may be confiscated
  1. objects to which the regulatory offence or criminal offence is related and
  2. objects which were required or intended for their committal or preparation.
- (2) Section 74a of the Penal Code and section 23 of the Regulatory Offences Act shall be applicable.
- (3) In the cases of section 34 para. 1 to 6, each also in conjunction with section 35, section 73d of the Penal Code shall be applied if the offender acts professionally or as a member of a gang that has been formed for the continuous committal of such criminal offences.

### Section 37 **Powers of the Customs Authorities**

- (1) The Public Prosecutor and the administrative authority may also entrust the main customs offices or customs investigation offices with the investigation in case of criminal and regulatory offences under sections 33 and 34 of this Act or section 19 para. 1 to 3, section 20 para. 1 and 2, also in conjunction with sections 21 or 22 a para. 1 nos. 4, 5 and 7 of the War Weapons Control Act (Art. 161 sentence 1 Code of Criminal Procedure).
- (2) The main customs offices and customs investigation offices as well as their officers also have to examine and prosecute criminal offences and regulatory offences of the type referred to in paragraph 1 without the official request of the Public Prosecutor or administrative authority, if they concern the transfer of objects. The same applies to cases of imminent danger. Article 163 of the Code of Criminal Procedure and section 53 of the Regulatory Offences Act shall remain unaffected.
- (3) In the cases of paragraphs 1 and 2, the customs officers of the main customs offices and customs investigation offices shall have the rights and duties of police officers in accordance with the provisions of the Code of Criminal Procedure and the Regulatory Offences Act. In this respect, they are investigating persons of the Public Prosecutor .
- (4) In these cases, the main customs offices and customs investigation offices as well as their officers may initiate summary proceedings concerning administrative penalties and effect seizure, search, investigation and other measures in accordance with the

provisions of the Code of Criminal Procedure applying to investigating persons of the Public Prosecutor; taking into account the requirements of Article 111I para. 2 sentence 2 of the Code of Criminal Procedure the main customs offices may direct the emergency sale.

### Section 38 **Criminal and Fine Proceedings**

- (1) Where the local court has jurisdiction over criminal offences under sect. 34, the local competence is with the local court in the district where the regional court is established. The Land government may settle the local responsibility of the local court in a different way by statutory order, where it seems useful considering the economic or traffic conditions, the structure of the administration or other local needs. The Land government may confer these powers upon the Land administration of justice.
- (2) Sections 49, 63 para. 2, 3 sentence 1 and section 76 para. 1, 4 of the Regulatory Offences Act referring to the participation of the administrative authority in the public prosecution procedure and in the court proceedings shall apply mutatis mutandis in the criminal procedure.
- (3) The administrative authority in accordance with this law and with sect. 36 para. 1 no. 1 of the Regulatory Offences Act is the main customs office. The Federal Ministry of Finance may, by statutory order not requiring the consent of the Bundesrat, settle the local responsibility of the main customs office as administrative authority in deviation from sentence 1, where it seems useful considering the economic or traffic conditions, the structure of the administration or other local needs.

Sections 39 to 43 (repealed)

### Section 44 **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 Agency for Agriculture and Food may demand information, where this is required to monitor the compliance with this Act and with the statutory orders and directives issued under this Act, as well as with acts of law by the Council or Commission of the European Communities in the field of foreign trade legislation. For this purpose, they may demand the presentation of business documents. The Main Customs Office and the Deutsche Bundesbank may also conduct inspections at the persons obliged to provide information for the above-mentioned purpose; the Federal Office of Economics and Export Control (BAFA) and the Federal Agency for Agriculture and Food may send authorised persons for inspections. When conducting the inspections, the staff members of the authorities referred to in sentence 3 and their authorised representatives may enter the business premises of the persons obliged to furnish information; in this respect, the basic right laid down in Article 13 of the Basic Law shall be restricted.
- (2) Where the documents under paragraph 1 were drawn up by the help of a data processing system, the administrative authority and the Deutsche Bundesbank may check the stored data in the course of an inspection and use the data processing system

for this purpose. Within the framework of an inspection they may also demand an automated evaluation of the data according to their standards or the handing over of the stored documents on a machine-readable data carrier. It shall be ensured that the stored data are available during the legally required retention period, are made readable immediately and may be evaluated without delay. The persons required to provide information have to assist the administrative authority and the German Federal Bank in executing their powers in accordance with sentences 1 and 2 above and to carry the expenses.

- (3) Anyone who participates directly or indirectly in foreign trade shall be obliged to provide information.
- (4) The persons obliged to furnish information may refuse to provide information on questions the answer to which would make them or relatives, as specified in section 383 para. 1 nos. 1 to 3 of the Code of Civil Procedure, liable to judicial prosecution or to proceedings under the Regulatory Offences Act.

#### Section 45

#### **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 information obtained in the fulfilment of its tasks under this Act, the War Weapons Control Act or acts of law of the Council or Commission of the European Communities in the field of foreign trade legislation, and communicate notifications based on a statutory order under section 26a to the other authorities, where this is required to achieve the objectives mentioned in section 5 or section 7 para. 1 of this Act, or to prevent or prosecute criminal offences. In addition, the Federal Office of Economics and Export Control (BAFA) may pass on information and notifications to the Federal Intelligence Service (BND) if the conditions of section 8 para. 1 or 3 of the BND Act are met. The Federal Office of Economics and Export Control (BAFA) may transmit the information obtained while accomplishing its tasks under this Act to other authorities responsible for the surveillance of foreign trade, where this is required to achieve the objectives specified in sections 6, 8 to 17 and 21 as well as in the cases of section 5 being of no importance to foreign or security policy. The recipients shall only use the information for the purpose for which it was transmitted.
- (2) The Zollkriminalamt (Customs Criminological Office) is entitled under paragraph 1 to retrieve data from an automated data processing system provided that it is required for the supervision of foreign trade in an individual case.
- (3) When initiating the retrieval process, the Zollkriminalamt and the Federal Office of Economics and Export Control (BAFA) shall lay down in writing the type of the data to be transmitted and the technical and organisational measures necessary under section 6 of the Federal Data Protection Act.
- (4) The setting up of the retrieval process shall require the consent of the Federal Ministry of Finance and of the Federal Ministry of Economics and Technology. The Federal Data Protection Commissioner shall be informed about the retrieval as well as about the measures taken under paragraph 3.
- (5) The Zollkriminalamt shall be responsible for the permissibility of each individual retrieval. Retrieval in the automated system shall only be possible by staff members who have

been especially authorised by the head of the Zollkriminalamt. The Federal Office of Economics and Export Control (BAFA) shall check the permissibility of the retrieval only if there is a reason to do so. It shall guarantee that the communication of data can be assessed and checked by taking appropriate random samples.

#### Section 45a (repealed)

#### Section 45b

#### **Transmission of Personal Data from Criminal Proceedings**

In criminal proceedings due to infringements of this Act or of the War Weapons Control Act the courts or public prosecutors may transmit personal data to the supreme federal authorities if this is required for achieving the objectives set out in sections 5 and 7 para. 1. The data obtained under sentence 1 may only be used for the above purposes. The recipient may, however, only pass on data to a public authority not mentioned in sentence 1 if the interest in the use of the transmitted data considerably outweighs the interest of the person concerned in keeping them secret, and the purpose of investigation of the criminal proceedings cannot be endangered.

#### Section 46

#### **Surveillance of the Transport of Goods, Postal Services and Tourist Traffic**

- (1) Objects that are exported, imported or on transit shall be presented upon request. They may be subjected to an examination or inspection. Means of transport, pieces of luggage and other containers may be inspected whether or not they contain objects the export, import or transit of which is restricted.
- (2) Anyone who travels to a foreign economic territory or enters from a foreign economic territory has to declare upon request whether he carries objects the transfer of which is restricted pursuant to this Act or to a statutory order issued on the basis of this Act.
- (3) Anyone who intends to export objects to an economic territory has to present the consignment to the competent customs authorities for export clearance. Details are laid down by statutory order under section 26. In order to facilitate postal freight and tourist traffic exceptions may be permitted by statutory order provided that the objective of surveillance is not endangered thereby.
- (4) The customs authorities shall monitor compliance with the provisions of this Act and with the statutory orders issued thereunder concerning the export, import and transit, as well as with acts of law of the Council and the Commission of the European Communities in the field of foreign trade legislation. The Federal Ministry of the Interior shall determine the Federal Border Police authorities which are responsible for monitoring the export of weapons and explosives; sentence 1 above shall remain unaffected.

#### Section 46a

#### **Costs**

- (1) The customs authorities may charge costs (fees and expenses)
  1. for the clearance outside the customs premises or after business hours

2. for issuing and verifying certificates, or
  3. for examining goods
- in implementing the provisions of this Act or of statutory orders issued thereunder with regard to export, import and transit as well as acts of law issued by the Council or the Commission of the European Communities in the field of foreign trade legislation.
- (2) In the case of paragraph 1 no. 1 above, the provisions on costs charged on the basis of section 178 of the Fiscal Code apply accordingly to assessing the costs and the procedure for their collection. In the cases of paragraph 1 nos. 2 and 3, the Federal Ministry of Economics and Technology is authorised, after consultation with the Federal Ministry of Finance, by statutory order not requiring the Bundesrat's approval to impose the charges for the above-mentioned activities and to determine the amount of the fees.

## **Part IV Final Provisions**

### Section 47 **Repeal of Regulations**

- (1) The following shall no longer be applied to foreign trade:
1. Law 53 (amended version), Control of Foreign Exchange and of the Movement of Property enacted by the US Military Government; Law 53 (amended version), Control of Foreign Exchange and of the Movement of Property enacted by the UK Military Government; Ordinance 235 (amended version, Control of Foreign Exchange and of the Movement of Property, issued by the High Commissioner of the French Republic in Germany;
  2. the implementing ordinances, general authorisations and other regulations relating to the provisions referred to in paragraph 1;
  3. Law 33 of the Allied High Commission, Control of Foreign Exchange;
  4. Article I para. 1 sub-para. f of Law 52 of the Supreme Commander – Blocking and Control of Property;
  5. paragraph 15 c of the Act on the Establishment of the Bank of the German Laender;
  6. section 20 of the Economic Offences Act of 9 July 1954 (Federal Law Gazette - BGBl.I, p. 175);
- (2) (Repeal of other provisions)

### Section 48 **(Repeal and Amendment of other Provisions)**

Section 49 (repealed)

### Section 50 **Transitional Provision**

- (1) Legal transactions for which a licence would have been required in accordance with provisions that became ineffective under section 47 para. 1, and the authorisation of which has not been decided, will take effect from the date when they were undertaken,



provided that they may be carried out without a licence with the entry into force of this Act. Section 31 sentence 3 applies accordingly.

- (2) If other regulations refer to the provisions specified in section 47 para. 1 no. 1, they shall be replaced by this Act, as far as the scope of this Act applies.

Section 51 (repealed)

Section 52  
**(Entry into Force)**