

**Thirteenth Act amending the Foreign Trade and Payments Act and the  
Foreign Trade and Payments Regulation**

**of 18 April 2009**

The Bundestag has adopted the following Act:

**Article I**  
**Amendment of the Foreign Trade and Payments Act**

The Foreign Trade and Payments Act in the version published on 26 June 2006 (BGBl. I, p. 1386), as most recently amended by Article 10 of the Act of 13 December 2007 (BGBl. I, p. 2897), is amended as follows:

1. In Section 4 paragraph 2 no. 11 the phrase "paragraph 8" shall be replaced by the phrase "paragraph 10".
2. Section 4a paragraph 2 is amended as follows:
  - a) The words "or enforceable orders in accordance with Section 2 paragraph 2 first sentence," shall be inserted after the words "Statutory orders".
  - b) In no. 3 the phrase "nos. 3 and 4" shall be replaced by the phrase "nos. 5 and 7" and a comma shall be inserted after the word "non-resident" [in the German text].
  - c) The following no. 4 shall be inserted after no. 3:

"4. branches and permanent establishments are not considered to be Community residents or Community-non-residents, notwithstanding Section 4 paragraph 1 nos. 6 and 8."

3. Section 7 is amended as follows:

a) Paragraph 1 is amended as follows:

aa) In no. 2 the word "or" shall be deleted.

bb) In no. 3 the full-stop at the end shall be replaced by a comma and the word "or".

cc) The following no. 4 shall be inserted after no. 3:

"4. guarantee the public policy or public security of the Federal Republic of Germany in terms of Articles 46 and 58(1) of the EC Treaty."

b) Paragraph 2 is amended as follows:

aa) In no. 5 the full stop at the end shall be replaced by a semicolon.

bb) The following no. 6 shall be added after no. 5:

"6. legal transactions on the purchase of resident companies or on the acquisition of shares in such companies by a Community-non-resident purchaser where such a purchase or acquisition jeopardises the public policy or public security of the Federal Republic of Germany referred to in Section 7 paragraph 1 no. 4 above; this requires a genuine and sufficiently serious threat, affecting one of the fundamental interests of society. Non-Community purchasers from Member States of the European Free Trade Association (Iceland, Liechtenstein, Norway, Switzerland) shall be afforded the same treatment as Community-resident purchasers."

4. Section 28 is hereby amended as follows:

a) The title shall be reworded as follows:

"Section 28 Issue of administrative acts"

b) In Section 28 paragraph 1 the words "the granting of licenses" shall be replaced by the words "the issuing of administrative acts and the receipt of reports".

c) Section 28 paragraph 2 is amended as follows:

aa) In no. 1 the phrase "unless provided otherwise below" shall be inserted after the phrase "Sections 5 to 7".

bb) In no. 2 the full stop at the end shall be replaced by a semicolon.

cc) The following no. 3 shall be added after no. 2:

"3. the Federal Ministry of Economics and Technology in the case referred to in Section 7 paragraph 2 no. 6; in the case of a prohibition or the issuing of specific orders in relation to a purchase within the meaning of Section 7 paragraph 2 no. 6, the Federal Ministry of Economics and Technology shall decide after the Federal Government has consented."

5. The following paragraph 3 is added after Section 31 paragraph 2:

"(3) A legal transaction governed by the law of obligations on the purchase of a resident company which is subject to scrutiny under Section 7 paragraph 1 and paragraph 2 no. 6 in conjunction with an authorization of the Federal Ministry of Economics and Technology to prohibit, after obtaining the consent of the Federal Government, the purchase within a specified period, shall be subject until the entire examination procedure has been completed to the condition subsequent that the Federal Ministry of Economics and Technology prohibits the purchase within the specified period."

6. Section 34 is amended as follows:

a) Paragraph 1 sentence 2 is amended as follows:

The word "exports" is replaced by the word "delivers".

b) Paragraph 4 is amended as follows:

aa) In no. 1 the word "or" at the end shall be deleted.

bb) In no. 2 the words "import, transit, transfer" shall be inserted after the word "export" and the full stop at the end shall be replaced by the word "or".

cc) The following new no. 3 shall be added:

„3. “acts in contravention of a directly applicable provision, published in the Federal Gazette, of a legal instrument of the European Communities, providing for a licence requirement for an export, import, transit, transfer, sale, delivery, provision, passing on, service performance, investment or assistance and which serves to enforce an economic sanction imposed by the Council of the European Union in the area of the Common Foreign and Security Policy.”

7. Section 38 paragraph 5 is repealed.

## **Article 2**

### **Amendment of the Foreign Trade and Payments Regulation**

The Foreign Trade and Payments Regulation in the version published on 22 November 1993 (Federal Gazette I, pp. 1934, 2493), as last amended by the Regulation of 4 March 2009 (Federal Gazette p. 823), is amended as follows:

1. Section 52 is amended as follows:

a) Paragraph 1 is amended as follows:

aa) The words "not less than" in the third sentence shall be deleted in sentence 3.

bb) The following fourth sentence shall be added to the paragraph:

"The voting rights of third parties with which the non-resident purchaser has concluded an agreement on the joint exercise of voting rights shall also be accorded to the purchaser."

b) Paragraph 2 is hereby amended as follows:

aa) The words "or issue orders" shall be inserted after the word "prohibit."

bb) The following second sentence shall be added: "The documents to be communicated shall be determined by the Federal Ministry of Economics and Technology by means of an announcement in the Federal Gazette."

2. The following Section 53 shall be inserted after Section 52:

"Section 53

Restrictions under Section 7 paragraph 1 and Section 7 paragraph 2 no. 6  
of the Foreign Trade and Payments Act

(1) The Federal Ministry of Economics and Technology may, within a period of three months following the conclusion of the contract governed by the law of obligations on the acquisition of voting rights, examine the purchase of a resident company or a direct or indirect acquisition of shares of such a company by a non-Community resident in order to determine whether the purchase will jeopardise the public policy or public security of the Federal Republic of Germany; in cases involving a public offer, the period begins with the publication of the decision to make the offer or with the publication of the fact that control of the company has been attained. This shall not apply if the direct or indirect share of voting rights held by the non-Community purchaser in the company in question after the purchase is less than 25%. When the share of voting rights held by the non-Community purchaser is being calculated, any voting rights held by other companies in the company to be purchased shall be allocated to the non-Community purchaser where the non-Community purchaser holds 25% or more of the voting rights of the other company. The voting rights of third parties with which the non-Community purchaser has concluded an agreement on the joint exercise of voting rights shall also be accorded to the purchaser. Branches and permanent establishments belonging to the purchaser shall not be considered as Community-resident. The Federal Ministry of Economics

and Technology may under the preconditions of sentences 1 and 2 also examine the purchase of a Community-resident company or a direct or indirect participation in such a company by a Community-resident company in which a non-Community resident holds at least 25% of the voting rights if there are indications that an abusive arrangement or circumvention transaction has taken place in order to circumvent an examination pursuant to sentences 1 and 2. Non-Community purchasers from Member States of the European Free Trade Association (Iceland, Liechtenstein, Norway, Switzerland) shall be afforded the same treatment as Community-resident purchasers. The Federal Ministry of Economics and Technology shall notify the purchaser of its decision to examine an acquisition pursuant to the first sentence.

(2) If the Federal Ministry of Economics and Technology has informed the purchaser of its decision to examine an acquisition in accordance with the first sentence of Section 53 paragraph 1, the purchaser shall be required to communicate to the Federal Ministry of Economics and Technology all documents relating to the purchase pursuant to sentence 2. The documents to be communicated shall be determined by the Federal Ministry of Economics and Technology by means of an announcement in the Federal Gazette. The Federal Ministry of Economics and Technology shall inform the Federal Government of the results of the examination. The Federal Ministry of Economics and Technology may, within a period of two months following receipt of the complete documents, prohibit or issue orders where necessary in order to safeguard the public policy or public security of the Federal Republic of Germany. Prior consent has to be obtained from the Federal Government before a purchase is prohibited or orders are issued.

(3) At the written request of a purchaser, in which the outlines of the planned purchase, the purchaser and his field of business must be presented, the Federal Ministry of Economics and Technology shall issue a certificate stating that there is no objection to the acquisition (certificate of non-objection), if the purchase raises no concerns concerning the public policy or public security of the Federal Republic of Germany. The certificate of non-objection shall be deemed to have been issued if the Federal Ministry of Economics and Technology does not open an examination procedure pursuant to Section 53 paragraph 1 sentence 1 within one month of receipt of the application.

(4) In order to implement a prohibition the Federal Ministry of Economics and Technology may take the necessary measures. In particular it may:

1. prohibit or limit the exercise of voting rights in the purchased company where they belong

to or are to be allocated to a non-Community purchaser,

or

2. appoint a trustee to reverse a purchase that has already taken place."

3. Section 70 paragraph 1 is amended as follows:

a) In no. 10 the word "or" at the end shall be deleted.

b) In no. 11 the phrase "or Section 53 paragraph 2 fourth sentence," shall be inserted after the phrase "Section 52 paragraph 2".

c) After no. 11 the following no. 11a shall be inserted:

"11a. contrary to Section 53 paragraph 2 first sentence sends an incorrect or incomplete document, or".

### **Article 3**

#### **Amendment of the Securities Purchase and Takeover Act**

The Securities Purchase and Takeover Act of 20 December 2001 (Federal Gazette I p. 3822), as amended by Article 70 of the Act of 17 December 2008 (Federal Gazette I p. 2586), is amended as follows:

1. Section 7 paragraph 1 is amended as follows:

a) The following second sentence shall be inserted after the first sentence:

"The Federal Agency shall communicate to the Federal Ministry of Economics and Technology the information that it received under no. 3 of the first sentence of Section 10 paragraph 2 and the fourth sentence of Section 35 paragraph 1 and, at the request of that authority, the document relating to the offer communicated to the Agency under the first sentence of Section 14 paragraph 1 or the first sentence of Section 35 paragraph 2."

b) The current second sentence shall become the third sentence.

2. The following new no. 3 shall be added after no. 2 of Section 9 paragraph 1:

"3. the Federal Ministry of Economics and Technology,".

#### **Article 4**

##### **Amendment of the Act against Restraints of Competition**

The Act against Restraints of Competition in the version published on 15 July 2005 (Federal Gazette I, p. 2114), as last amended by Article 2c of the Act of 15 December 2008 (Federal Gazette I, p. 2426), is amended as follows:

In Section 50c, the following paragraph 3 shall be inserted:

"(3) The Federal Cartel Office may communicate to other public bodies information on a company involved in a merger which it has received under Section 39 paragraph 3 where this is necessary to pursue the aims referred to in Section 7 paragraph 1 no. 1 and Section 7 paragraph 2 no. 6 of the Foreign Trade and Payments Act. In the case of mergers with a Community dimension within the meaning of Article 1(1) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings in the currently valid version, the Federal Cartel Office shall be authorised to do so only with regard to information which has been published by the European Commission pursuant Article 4(3) of that Regulation."

#### **Article 5**

##### **Authorisation to publish**

The Federal Ministry of Economics and Technology may publish in the Federal Gazette the text of the Foreign Trade and Payments Act in the version valid as of the entry into force of this Act.

#### **Article 6**

##### **Entry into force**

This Act shall enter into force on the day following its promulgation.



