

CONVENIENCE TRANSLATION

only the German language version shall be legally binding and prevail

**Federal Ministry
for Economic Affairs and Energy**

General administrative act

on the information and documents to be submitted pursuant to Section 14a of the Foreign Trade and Payments Act and Sections 55a, 58 and 60 of the Foreign Trade and Payments Ordinance

of 27 May 2021

Assessments of acquisitions of companies pursuant to Section 55 ff. and Section 60 ff. of the Foreign Trade and Payments Ordinance require submission in the German language of the documents specified in sections I to IV of this general administrative act.

The documents are to be submitted electronically in a standard file format (for example PDF, Word or Excel) without password protection via email (to investitionspruefung@bmwi.bund.de). Submission in writing by post (to Bundesministerium für Wirtschaft und Energie, Investitionsprüfung, 11019 Berlin) is also permissible.

The documents shall be numbered consecutively and clearly named.

If reference is made to firms or the names of natural or legal persons that are used in a script other than the Latin script, these shall be stated both in Latin characters and the script otherwise used.

I.

Application for the issuing of a declaration of non-objection

For an application for the issuing of a declaration of non-objection, the following supplementary information and documents shall be submitted – in addition to the information set out in Section 58 subsection 1 sentence 2 of the Foreign Trade and Payments Ordinance – on the basis of Section 58 subsection 1 sentence 3 of the Foreign Trade and Payments Ordinance.

1. Power of representation

Proof of the power to represent the acquirer submitting the application; in cases where the applicant is a foreigner, a person authorised to take delivery of documents in Germany shall also be named.

2. Information on the domestic target company

- a) Name/company, location of headquarters and registered office, full business address, commercial register number/business register number, tax number, EORI number; full name, registered address, date of birth, place of birth, nationality and passport/ID number of the members of the management board and all other persons who have power of representation
- b) Business sector and detailed description of the domestic company's business activities

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- c) List and, additionally, representation as a chart of all direct and indirect shareholders who hold a share of the voting rights in accordance with Section 56 of the Foreign Trade and Payments Ordinance in the domestic company, stating the share of the voting rights held by each party
- d) Number of persons employed by the domestic company
- e) Turnover of the domestic company based on its last three financial statements; in cases where the financial statement is subject to a mandatory audit pursuant to Section 316 of the German Commercial Code or where a voluntary audit of the financial statement has been carried out, the last certified financial statements shall be taken into account
- f) List of business contacts with public-sector bodies over the last five years, particularly with public contracting authorities within the meaning of Section 99 subsection 1 no. 1-3 of the Act against Restraints of Competition and with defence industry companies, including in particular contracts, contractual negotiations, research and development projects and comparable legal relationships, including comparable legal relationships governed by public law.
- g) Information on the domestic company's industrial security arrangements and its obligation to protect classified documents

3. Information on the acquisition

- a) Acquisition price in euros
- b) Form of acquisition within the meaning of Section 55 ff. of the Foreign Trade and Payments Ordinance:
 - i. Acquisition of a domestic company
 - ii. Acquisition of a stake in a domestic company
 - iii. Acquisition of a definable part of a domestic company
 - iv. Acquisition of all the essential operating equipment of a domestic company
 - v. Acquisition of all the essential operating equipment of a definable part of a domestic company
- c) Share of voting rights in the domestic company of the direct acquirer and the indirect acquirers before the acquisition, share of voting rights (in percent) to be acquired, and other possibilities to exert influence over the domestic company within the meaning of Section 56 subsection 3 of the Foreign Trade and Payments Ordinance

4. Information on the direct acquirer and indirect acquirers

- a) List and, additionally, representation as a chart of all direct and indirect shareholders who hold a share of the voting rights in accordance with Section 56 of the Foreign Trade and Payments Ordinance in the direct acquirer, stating for each party the name/company, location of headquarters, registered office and full business address, and indicating each party's share of the voting rights
- b) All investor-related factors pursuant to Section 55a subsection 3 of the Foreign Trade and Payments Ordinance (regarding the direct acquirer and indirect acquirers)

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5. Information on the direct seller

Name/company and registered office, full address; in cases where the direct seller is a foreigner, a person authorised to take delivery of documents in Germany shall also be named.

II.

Report under the cross-sectoral procedure

For a report pursuant to Section 55a subsection 4 of the Foreign Trade and Payments Ordinance, the following supplementary information and documents shall be submitted – in addition to the information set out in Section 55a subsection 4 sentences 4 and 5 of the Foreign Trade and Payments Ordinance – on the basis of Section 55a subsection 4 sentence 6 of the Foreign Trade and Payments Ordinance.

1. Power of representation

Proof of the power to represent the direct acquirer; in cases where the direct acquirer is a foreigner, a person authorised to take delivery of documents in Germany shall also be named.

2. Information on the domestic target company

- a) Name/company, location of headquarters and registered office, full business address, commercial register number/business register number, tax number, EORI number; full name, registered address, date of birth, place of birth, nationality and passport/ID number of the members of the management board and all other persons who have power of representation
- b) Business sector and detailed description of the domestic company's business activities
- c) List and, additionally, representation as a chart of all direct and indirect shareholders who hold a share of the voting rights in accordance with Section 56 of the Foreign Trade and Payments Ordinance in the domestic company, in each case stating the share of the voting rights
- d) Number of persons employed by the domestic company
- e) Turnover of the domestic company based on its last three financial statements; in cases where the financial statement is subject to a mandatory audit pursuant to Section 316 of the German Commercial Code or where a voluntary audit of the financial statement has been carried out, the last certified financial statements shall be taken into account
- f) List of business contacts with public-sector bodies over the last five years, particularly with public contracting authorities within the meaning of Section 99 subsection 1 no. 1-3 of the Act against Restraints of Competition and with defence industry companies, including in particular contracts, contractual negotiations, research and development projects and comparable legal relationships, including comparable legal relationships governed by public law
- g) Information on the domestic company's industrial security arrangements and its obligation to protect classified documents
- h) All categories listed in Section 55a subsection 1 no. 1-27 of the Foreign Trade and Payments Ordinance that the domestic company falls into

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3. Information on the acquisition

- a) Acquisition price in euros
- b) Form of acquisition within the meaning of Sections 55 ff. of the Foreign Trade and Payments Ordinance:
 - i. Acquisition of a domestic company
 - ii. Acquisition of a stake in a domestic company
 - iii. Acquisition of a definable part of a domestic company
 - iv. Acquisition of all the essential operating equipment of a domestic company
 - v. Acquisition of all the essential operating equipment of a definable part of a domestic company.
- c) Share of voting rights in the domestic company of the direct acquirer and the indirect acquirers before the acquisition, share of voting rights (in percent) to be acquired, and other possibilities to exert influence over the domestic company within the meaning of Section 56 subsection 3 of the Foreign Trade and Payments Ordinance

4. Information on the direct acquirer and indirect acquirers

- a) List and, additionally, representation as a chart of all direct and indirect shareholders who hold a share of the voting rights in accordance with Section 56 of the Foreign Trade and Payments Ordinance in the direct acquirer, stating for each party the name/company, location of headquarters, registered office and full business address, and indicating each party's share of the voting rights
- b) All investor-related factors pursuant to Section 55a subsection 3 of the Foreign Trade and Payments Ordinance that need to be taken into account for the direct acquirer and indirect acquirers

5. Information on the direct seller

Name/company and registered office, full address; in cases where the direct seller is a foreigner, a person authorised to take delivery of documents in Germany shall also be named.

III.

Report under the sector-specific procedure

For a report pursuant to Section 60 subsection 3 of the Foreign Trade and Payments Ordinance, the following supplementary information and documents shall be submitted – in addition to the information set out in Section 60 subsection 3 sentence 3 of the Foreign Trade and Payments Ordinance – on the basis of Section 60 subsection 3 sentence 5 of the Foreign Trade and Payments Ordinance.

1. Power of representation

Proof of the power to represent the direct acquirer; in cases where the direct acquirer is a foreigner, a person authorised to take delivery of documents in Germany shall also be named.

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2. Information on the domestic target company

- a) Name/company, location of headquarters and registered office, full business address, commercial register number/business register number, tax number, EORI number; full name, registered address, date of birth, place of birth, nationality and passport/ID number of the members of the management board and all other persons who have power of representation
- b) Business sector and detailed description of the domestic company's business activities
- c) List and, additionally, representation as a chart of all direct and indirect shareholders who hold voting rights pursuant to Section 60a of the Foreign Trade and Payments Ordinance in the domestic company, in each case stating the share of the voting rights
- d) Number of persons employed by the domestic company
- e) Turnover of the domestic company based on its last three financial statements; in cases where the financial statement is subject to a mandatory audit pursuant to Section 316 of the German Commercial Code or where a voluntary audit of the financial statement has been carried out, the last certified financial statements shall be taken into account
- f) List of business contacts with public-sector bodies over the last five years, particularly with public contracting authorities within the meaning of Section 99 subsection 1 no. 1-3 of the Act against Restraints of Competition and with defence industry companies, including in particular contracts, contractual negotiations, research and development projects and comparable legal relationships, including comparable legal relationships governed by public law
- g) Information on the domestic company's industrial security arrangements and its obligation to protect classified documents
- h) All categories listed in Section 60 subsection 1 sentence 1 no. 1-4 of the Foreign Trade and Payments Ordinance that the domestic company falls into
- i) The domestic company's main supplier and main buyer of goods pursuant to Section 60 subsection 1 sentence 1 no. 1-3 of the Foreign Trade and Payments Ordinance in the last five financial years

3. Information on the acquisition

- a) Acquisition price in euros
- b) Form of acquisition within the meaning of Sections 60 ff. of the Foreign Trade and Payments Ordinance:
 - i. Acquisition of a domestic company
 - ii. Acquisition of a stake in a domestic company
 - iii. Acquisition of a definable part of a domestic company
 - iv. Acquisition of all the essential operating equipment of a domestic company
 - v. Acquisition of all the essential operating equipment of a definable part of a domestic company
- c) Share of voting rights in the domestic company of the direct acquirer and the indirect acquirers before the acquisition, share of voting rights (in percent) to be acquired, and other possibilities to exert influence over the domestic company within the meaning of

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Section 60a subsection 2 in conjunction with Section 56 subsection 3 of the Foreign Trade and Payments Ordinance

4. Information on the direct acquirer and indirect acquirers

- a) List and, additionally, representation as a chart, of all direct and indirect shareholders who hold a share of the voting rights pursuant to Section 60a of the Foreign Trade and Payments Ordinance in the direct acquirer, stating for each party the name/company, location of headquarters and registered office and full business address, and indicating each party's share of the voting rights
- b) All investor-related factors pursuant to Section 60 subsection 1b of the Foreign Trade and Payments Ordinance that need to be taken into account for the direct acquirer and indirect acquirers

5. Information on the direct seller

Name/company and registered office, full address; in cases where the direct seller is a foreigner, a person authorised to take delivery of documents in Germany shall also be named.

IV.

Opening of the assessment procedure

In cases where an assessment procedure is opened pursuant to Sections 55 ff. or Sections 60 ff. of the Foreign Trade and Payments Ordinance, the following documents shall be submitted on the basis of Section 14a subsection 2 sentences 1 and 2 of the Foreign Trade and Payments Act.

In cases where the required documents have already been submitted as part of an application for the issuing of a declaration of non-objection or as part of a report, it is not necessary to submit them once again at the time the assessment procedure is opened.

1. Power of representation

Proof of the power to represent the direct acquirer; in cases where the direct acquirer is a foreigner, a person authorised to take delivery of documents in Germany shall also be named.

2. Information on the domestic company

- a) Name/company, location of headquarters and registered office, full business address, commercial register number/business register number, tax number, EORI number; full name, registered address, date of birth, place of birth, nationality and passport/ID number of the members of the management board and all other persons who have power of representation
- b) Business sector and detailed description of the domestic company's business activities
- c) List and, additionally, representation as a chart of all direct and indirect shareholders who hold a share of the voting rights pursuant to Section 56 or Section 60a of the Foreign Trade and Payments Ordinance in the domestic company, in each case stating the share of the voting rights
- d) Number of persons employed by the domestic company

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- e) Turnover of the domestic company based on its last three financial statements; in cases where the financial statement is subject to a mandatory audit pursuant to Section 316 of the German Commercial Code or where a voluntary audit of the financial statement has been carried out, the last certified financial statements shall be taken into account
- f) List of business contacts with public-sector bodies over the last ten years, particularly with public contracting authorities within the meaning of Section 99 subsection 1 no. 1-3 of the Act against Restraints of Competition and with defence industry companies, including in particular contracts, contractual negotiations, research and development projects and comparable legal relationships, including comparable legal relationships governed by public law.
- g) Information on the domestic company's industrial security arrangements and its obligation to protect classified documents
- h) For the sector-specific procedure: the domestic company's main supplier and main buyer of goods pursuant to Section 60 subsection 1 sentence 1 no. 1-4 of the Foreign Trade and Payments Ordinance in the last five financial years
- i) Name/company, registered office, full business address and description of the activities of all companies based in the EU in which the domestic company holds a share of the voting rights in accordance with Section 56 or Section 60a of the Foreign Trade and Payments Ordinance

3. Information on the acquisition

- a) Acquisition price in euros
- b) Form of acquisition within the meaning of Sections 55 ff. or Sections 60 ff of the Foreign Trade and Payments Ordinance
 - i. Acquisition of a domestic company
 - ii. Acquisition of a stake in a domestic company
 - iii. Acquisition of a definable part of a domestic company
 - iv. Acquisition of all the essential operating equipment of a domestic company
 - v. Acquisition of all the essential operating equipment of a definable part of a domestic company
- c) Share of voting rights in the domestic company of the direct acquirer and the indirect acquirers before the acquisition, share of voting rights (in percent) to be acquired, and other possibilities to exert influence over the domestic company within the meaning of Section 56 subsection 3 of the Foreign Trade and Payments Ordinance (cross-sectoral procedure) or Section 60a subsection 2 in conjunction with Section 56 subsection 3 of the Foreign Trade and Payments Ordinance (sector-specific procedure)
- d) Contract governed by the law of obligations regarding the acquisition; in cases where an offer within the meaning of the Securities Acquisition and Takeover Act is made, the offer document shall be submitted; it shall be submitted simultaneously to the Federal Financial Supervisory Authority pursuant to Section 14 subsection 1 of the Securities Acquisition and Takeover Act
- e) Detailed description of the purpose of the acquisition and the business strategy for the domestic company for the time following the acquisition, stating in particular the acquisition's effect on

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- i. for the cross-sectoral procedure, the public order or security of the Federal Republic of Germany, of another Member State of the European Union or in relation to projects or programmes of Union interest within the meaning of Article 8 of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79 I of 21 March 2019, p. 1) or
 - ii. for the sector-specific procedure, the acquisition's effect on the essential security interests of the Federal Republic of Germany.
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- f) Information on planned changes, including in particular plans to relocate business activities outside Germany or to terminate business activities in Germany or the European Union
 - g) Details on the attainment of effective participation by the direct or indirect acquirer in the control of the domestic company within the meaning of Section 56 subsection 3 of the Foreign Trade and Payments Ordinance or Section 60a subsection 2 of the Foreign Trade and Payments Ordinance in conjunction with Section 56 subsection 3 of the Foreign Trade and Payments Ordinance
 - h) Existing or planned corporate contracts or company group relationships and all other contracts or legal relationships as a result of which the direct acquirer or an indirect acquirer is brought together as a controlling or controlled company with other companies under single management as well as consortium agreements and joint ventures.
 - i) Information on the financing of the acquisition; financing provided for the acquisition by state or public-sector bodies shall be listed separately

4. Information on the direct acquirer and indirect acquirers

- a) List and, additionally, representation as a chart of all direct and indirect shareholders who hold a share of the voting rights in accordance with Section 56 of the Foreign Trade and Payments Ordinance in the direct acquirer, stating for each party the name/company, location of headquarters, registered office and full business address, and indicating each party's share of the voting rights

In addition to this, the following information shall also be provided on the aforementioned parties: Name/company, location of headquarters and registered office, full business address, commercial register number/business register number, tax number, EORI number; full name, registered address, date of birth, place of birth, nationality and passport/ID number of the members of the management board and all other persons who have power of representation

- b) All investor-related factors pursuant to Section 55a subsection 3 or Section 60 subsection 1b of the Foreign Trade and Payments Ordinance that need to be taken into account for the direct acquirer and indirect acquirers
- c) Business sector and detailed description of the direct acquirer's and all indirect acquirers' business activities
- d) List of all companies based in the EU in which the direct acquirer or an indirect acquirer holds a share of the voting rights in accordance with Section 56 or Section 60a of the

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Foreign Trade and Payments Ordinance, stating the company name, registered office, full business address and description of the business activities

- e) List of business contacts with public-sector bodies over the last ten years, particularly with public contracting authorities within the meaning of Section 99 subsection 1 no. 1-3 of the Act against Restraints of Competition and with defence industry companies, including in particular contracts, contractual negotiations, research and development projects and comparable legal relationships, including comparable legal relationships governed by public law

5. Information on the direct seller

Name/company and registered office, full address; in cases where the direct seller is a foreigner, a person authorised to take delivery of documents in Germany shall also be named.

V.

Notification, transitional provisions

Pursuant to Section 41 subsection 3 sentence 1 of the Administrative Procedure Act and Section 14a subsection 2 sentence 3 of the Foreign Trade and Payments Act, Section 55a subsection 4 sentence 7, Section 58 subsection 1 sentence 4 and Section 60 subsection 3 sentence 6 of the Foreign Trade and Payments Ordinance, this general administrative act is hereby promulgated and shall be deemed to have been promulgated on the day following publication. In line with Section 41 sentence 4 sentence 2 of the Administrative Procedure Act, this general administrative act and information on legal remedies can be inspected at the Federal Ministry for Economic Affairs and Energy, Scharnhorststraße 34-37, 10115 Berlin during normal working hours. The general administrative act of 22 March 2019 (Federal Gazette, Official Section, 11 April 2019 B1) and the general administrative act of 22 March 2019 (Federal Gazette, Official Section, 11 April 2019 B2) expire when this general administrative act is promulgated.

Berlin, [...]

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Federal Ministry

for Economic Affairs and Energy

For the Minister

Christina Decker