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NOTE VERBALE

The Embassy of Georgia to the Republic of Austria, Permanent Representation of Georgia to the OSCE and other International Organizations in Vienna presents its compliments to the Missions/Delegations of participating States to the OSCE and to the Conflict Prevention Center and has the honor to submit the "Questionnaire on Participating State' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology".

The Embassy of Georgia to the Republic of Austria, Permanent Representation of Georgia to the OSCE and other International Organizations in Vienna avails itself of this opportunity to renew to the Missions/Delegations of participating States to the OSCE and to the Conflict Prevention Center the assurances of its highest consideration.

Attachment: 8 pages.

Vienna, 1 October, 2018

**To: OSCE delegations and Missions
Conflict Prevention Center**



Questionnaire on Participating States' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology

1. Basic principles, policies and/or national practices on the export of conventional arms and related technology.

Basic principles of export control in Georgia are as follows:

- To protect the national security of Georgia through the establishment of national control of strategic products.
- To Facilitate strengthening of international stability and security according to the existed commitments and principles in the frame of UN.
- To fulfill its international commitments and obligations as a member of UN and appropriate non-proliferation and security regimes.

National Policy on export control is strengthening of arms control through the establishment and implementation of effective national export control system on arms and related technology in compliance with international principles, standards and criteria.

National export control system of Georgia comprises all essential components that are indispensable parts of universally approved practice for effective implementation of export control:

Compliance with requirements of international regimes and agreements with regard to the arms export control;

- Appropriate national legislative framework based on international principles and standards;
- Specific administrative regulations;
- National control lists on military products;
- Designated competent authorities with particular functions and responsibilities;
- Clearly defined administrative and criminal responsibilities for the infringement of law;
- Requirements for:
 - Interagency cooperation;
 - International cooperation;
 - Close cooperation of government and private sector associated with controlled activities;
 - Conducting outreach activities of government for industry for awareness rising.

2. National legislation governing the export of conventional arms and related technology. If applicable, report changes and/or updates to the data provided in 1995, including any relevant subsidiary legislation.

New Georgian legislation of export control has been adopted and entered into force since 1st october 2014. They are as follows:

- Law on “Control of Military and Dual Use Products”;

- Law of Georgia on „Licenses and Permits”;
- Governmental decree #372 (09.06.2014) on “Determining Arrangements on Control of Military and dual use Products”;
- Governmental decree #394 (13.06.2014) on “Approval of Military and Dual Use Products Lists”;
- Order of Minister of Defence #65 (29.08.2104) on ”Approval of Regulation of Standing Commission of Military-Technical Issues of Ministry of Defense of Georgia”.

All these normative acts are in full compliance with standards and criteria of European Union. As for Military List, it is identical to Common Military List of EU.

3. Any international agreements or guidelines, other than OSCE commitments, covering the export of conventional arms to which they are a party.

Georgia’s participation in the export control connected to the international sanctions towards one or several countries is defined by Georgian law, on the basis of decisions of UN or other international organizations.

Georgia participates in the activities of those international organizations specifying on the provision and strengthening regimes for non-proliferation of weapons of mass destruction and those acting in the export control field according to the requirements of UN and other international organizations. Georgia signed Arms Trade Treaty (ATT) on 25 September 2014 that was subsequently ratified by Res. N 4696 of the Parliament of Georgia on 23 December 2015”.

4. Procedures for processing an application to export conventional arms and related technology.

Issuing authority:

Ministry of Defense of Georgia – responsible for control of arms, military equipment and related technology circulation and authorized for issuance:

- Licenses on arms - trade, manufacturing and repairing related activities;
- Permits on export, import, transit, brokering and technical assistance of military products.

There has been functioning Standing Commission of Military-Technical Issues and Interagency Experts Group at the MOD of Georgia. Commission is chaired by the Minister of Defence.

Interagency Experts Group is composed of the specialists from appropriate governmental agencies involved in export control:

- Ministry of Defense;
- State Security Service;
- Ministry of Justice;
- LELP Agency of Nuclear and Radiation Safety of the Ministry of Environment Protection and Agriculture;

- LELP Technical and Construction Supervision Agency of the Ministry of Economy and Sustainable Development;
- Customs Department of the Revenue Service of the Ministry of Finance;
- Ministry of Foreign Affairs.

Experts Group supports the interagency partnership and information sharing between the governmental agencies based on the specifics and interests of every agency towards each application.

The organizational-technical support of Standing Commission is conducted by the Military-Technical Issues Department of MOD. The head of department is the chair of Experts Group and Executive Secretary of Standing Commission.

Procedures for processing an application:

- Application at the first stage should be submitted to the Standing commission of Military-Technical Issues of MOD;

The Order of Minister of Defense #65 (29.08.2104) on "Approval of Regulation of Standing Commission of Military-Technical Issues of Ministry of Defense of Georgia" defines the functions, duties and decision-making procedures of Standing Commission and experts group, including dates, basis for revocation, denial or suspension of decision/recommendation and the list of documentation which should be submitted for obtaining the recommendation as well.

Standing Commission of MOD of Georgia is an advisory body and makes political decisions, grants decisions/Recommendations on Export, import, transit, brokering and technical assistance of military products taking into account the main criteria determined by the Governmental decree #372 (09.06.2014) on "Determining Arrangements on Control of Military and dual use Products". Those criteria are in full compliance with EU standards and Export Control principles as a whole (EU Common Position 2008/944/CFSP).

Military-technical department of MOD of Georgia is in charge of examining each application with all attached documents, focused on the compliance with all main abovementioned principles and criteria towards national interests and international obligations and prepare the draft recommendations for reviewing firstly at the Experts Group and then at the Commission's sessions.

The second stage – Recommendation of Standing Commission is the necessary basis for export permit issuance by the Ministry of Defense. Documents required for this purpose are defined by the Governmental decree #372 (09.06.2014) on "Determining Arrangements on Control of Military and dual use Products" and Law on "Licenses and Permits".

Despite the positive conclusion of Commission application for export permit could be denied if the other documents are not appropriate to the requirements and provisions of abovementioned normative acts or if the terms of the case have been changed after recommendation was issued.

5. List of Conventional Weaponry under National Export Controls and the Basis for Their Control.

New military list was approved and entered into force since 1st October 2014. This control list replaced the presidential decree # 304 on “The List of Military Products Subject to Export and Import Control” and is similar to the EU Military List. Conventional arms, like any other kinds of armament and technologies connected with them are now defined in the national control list approved by The Governmental decree #394 (13.06.2014) on “Approval of Military and Dual Use Products Lists” Annex #1. The legal basis for their control is presented by abovementioned Georgian laws.

6. The principles and national regulations on the destination or end user of equipment.

The key role in developing the export permits on conventional arms plays the examination of each export on case by case principle. Decision making is focused on the country of ultimate destination and end user of exporting goods taking into account the following criteria, that are equal to EU standards, and defined by the Governmental decree #372 (09.06.2014) on “Determining Arrangements on Control of Military and dual use Products”:

The recommendation should not be granted if the curtain export is contrary to the:

- National and security interests of Georgia;
- International obligations of Georgia on non-proliferation and security issues.

Standing Commission should also take into account the following criteria:

- The protection of human rights and international humanitarian norms in the country of ultimate destination;
- Internal situation in the country of final destination regarding destabilization and armed conflicts;
- Keeping peace, stability and security in region;
- Concern of importing country regarding terrorism, its allies and fulfillment of norms of International Law;
- Obligations not to use force and perform the norms of International humanitarian Law by the importing country;
- Implementation of obligations regarding non-proliferation of nuclear and other weapons of mass destruction.
- Defense and Internal security interests of importing country;
- Technical capability of importing country to use such products;
- The capacity of importing country to conduct the effective export control;
- The risk of diversion of goods to the undesirable hands.
- The risk of the transfer the goods to the terrorists or terrorist organizations;
- The relevance of goods with the technical and economic capability of importing country.

UN sanctions are obligatory for Georgia.

There is differentiation between destinations. Preferences are given to the EU and NATO member states only.

7. Requirements for the provision of an end-user certificate in an export license application, or of non-re-exportation clauses or of any other type of certification before and after delivery for conventional arms export contracts.

The key role in licensing process plays the examination and assessment of submitted End User Certificate.

The forms of EUC, requested Information and obligations that should be included in the End User Certificate is defined in Governmental decree #372 (09.06.2014) on “Determining Arrangements on Control of Military and dual use Products”. According to this, to the Ministry of Defense should be presented the following EUC forms:

- Approved by the Annexes ##5, 7 and 9 of abovementioned Decree that could be filled in by the end user.
- Determined by the legislation of importing country, if this legislation recognizes only this form.

The obligations of end user that EUC should contain are to use the goods only in peaceful purposes on its territory and not to re-export them to the third country without the consent of exporting country.

Authenticity of this certificate must be proved by apostille or legalization.

The holder of Export Permit should submit to the MOD of Georgia all required documents ensuring fulfillment of permit provisions. It could be Delivery verification certificate or/and customs declaration.

8. National definition of transit and transshipment (including free zones) of conventional arms, together with associated national legislation and compliance procedures.

The Law on “Control of Military and Dual Use Products” gives a definition of the term - „transit” in the following way:

Transit – this term is determined according to The Tax Code of Georgia. It means the transportation of goods through the customs territory of Georgia through the customs clearance. Transit of Military products is conducted on the basis of transit permit issued according to the Georgian legislation.

Procedures and required documents for issuance of transit permit on Conventional Arms is defined by the Governmental decree #372 (09.06.2014) on “Determining Arrangements on Control of Military and dual use Products”;

“Transshipment” is not specified by the current Georgian legislation and is regulated the same way as transit.

9. The procedures governing companies wishing to export arms. Are the companies obliged to seek official governmental authority to enter into contract negotiations or to sign contracts with foreign customers.

According to the Georgian legislation regulating the export control, an entity seeking to export arms and related materials should obtain the General License on Trade of Military Goods. The Ministry of Defense is authorized to issue such License for legal entities registered in Georgian National registers. Requirements for obtaining General Trade License of Arms and Military equipment are defined in Law on “Licenses and Permits”.

The owner of Trade license should apply first for export recommendation to the Standing Commission of MOD and then to the MOD for export permit.

As for legislative bases, which are used by companies as guideline, there is easy access to them for entities wishing to export military goods. All the necessary normative acts, executive bodies, contact information, control lists and description of procedures are accessible through the website of Georgian Export Control. Besides, in case of questions everyone is free to apply for consultations to the Military-Technical issues Department of the Ministry of Defense of Georgia.

The companies are not obliged to seek official governmental authority to enter into contract negotiations or to sign contracts with foreign customers.

10. Policy on revocation of export licenses once they have been approved.

According to the Governmental decree #372 (09.06.2014) on “Determining Arrangements on Control of Military and dual use Products”, the basis for revocation of export permit are as follows:

- Cases specified by the Law of Georgia on “Licenses and Permits“;
- General Administrative Code of Georgia, namely articles 60, 60¹ and 61;
- Voluntarily refusal of permit by the permit holder;
- Because of the changed situation in which permit is in contrary with provisions of Article 3 of the criteria set forth by the abovementioned Decree.
- The revocation of the documents determined by the Article 4 of this Decree;
- In terms of national interests of Georgia if it was imposed embargo on particular country.

11. The penal and administrative implications for any exporter failing to comply with national controls. Changes and/or updates to the data provided in 1995.

Violation of the permit provisions identified by The Georgian Law on “Control of Military and Dual Use Products” causes fines determined by The Law of Georgia on “Licenses and Permits”.

Criminal responsibility for violation of abovementioned law is considered in Criminal Codex.

12. Any circumstances in which the export of arms does not require an export license.

Governmental decree #372 (09.06.2014) on “Determining Arrangements on Control of Military and dual use Products”, Article 7 specifies exemptions from requirement of obtaining the export permits:

Export permit on Military products should not be requested for:

- Diplomatic missions and accredited diplomats operating in Georgia within the official diplomatic purposes;
- Legal entities, who seek to obtain export permit to conduct export or import of military products for the Georgian governmental structures or under their request.

Above mentioned does not mean that they are free of obligation to obtain the recommendation of Standing Commission of MOD of Georgia.

13. The licenses for temporary export (e.g. Demonstration or testing), the period allowed and any special conditions attached on the license, including verification of return procedures.

New Georgian legislation does not specify temporary export of military products. All cases of export whether they are temporary or permanent should require “Export Permit of Military Products” determined by the Article 24, Para. 17² of the Law of Georgia on “Licenses and Permits”.

14. License documents and any standard conditions attached to it (copies to be provided).

Attachment: permit sample

15. Different types (e.g. individual, general, restricted, full, permanent, etc.) of licenses and what they are used for.

Georgian legislation does not specify such types of licenses as individual, general, restricted, full, permanent. There is only one type of license on import, export, transit, technical assistance or brokering services that shall be issued only once, prior to each transaction. The validity of license shall be defined by the licensing authority and shall be determined by the provisions of license.

Law on “Licensees and permits” Article 24 defines the types of permits:

- Paragraph 17¹ - Import Permit of Military Products;
- Paragraph 17² – Export Permit of Military Products;
- Paragraph 17³ - Transit Permit of Military Products;
- Paragraph 17⁴ – Permit of brokering on Military Products;
- Paragraph 17⁵ – Permit of Technical Assistance on Military Products.

16. Advice given to exporters as to licenseability, such as the likelihood of approval for a possible transaction.

- All exporters should comply fully with requirements of national export control legislation;
- They should preferably be familiar with Georgian export control legislation, especially with criteria while entering into negotiations with their future partners.

- They have to understand their products;
- They have to consider the country of ultimate destination, is there imposed any sanctions;
- They have to know reliability of their contractors and end users of the goods, are they suspected or not in any illegal activities.
- Exporters should submit all required necessary documents and information to the MOD.

17. The average number of export licenses issued annually and the staff engaged in the export licensing procedure.

MOD issued 2 export permits in 2015.

Staff engaged in the export licensing procedures:

Military Technical Issues Department – 7 persons;

Standing Commission on Military Technical Issues of MOD – 6 members;

Interagency Experts Group at the Standing Commission of MOD – 6 members.

18. Any other relevant information pertaining to the export of conventional arms and related technology, e.g., additional laws, reports to Parliament, special procedures for certain goods.

- Order of Minister of Defence #65 (29.08.2104) on "Approval of Regulation of Standing Commission of Military-Technical Issues of Ministry of Defense of Georgia".

19. Are all guidelines governing conventional arms transfers nationally published?

The normative acts regulating export of conventional arms are published in "Georgian Legislation Matsne" according to Georgian Law on Normative Acts.