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3 enclosures

N o t e V e r b a l e

The Permanent Mission of Austria to the Organization for Security and Cooperation in Europe, Vienna, presents its compliments to the Missions and Delegations of the participating States to the OSCE and to the OSCE Conflict Prevention Centre and has the honour to transmit enclosed the reply by the Austrian authorities to the Questionnaire on participating States' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology as well as to the Information Exchange on Conventional Arms Transfers.

The Permanent Mission of Austria to the OSCE avails itself of this opportunity to renew to all OSCE Missions, Delegations and the Conflict Prevention Centre the assurance of its highest consideration.

Vienna, 5 June 2018



To all
Delegations/Permanent Missions to the OSCE
To the Conflict Prevention Centre (CPC)

V i e n n a

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

AUSTRIA

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

The Federal Act on the Export, Import and Transit of War Material of 18 October 1977, Federal Law Gazette No. 540/1977, as amended by Federal Law Gazette I No. 72/2011, in short: War Material Act, WMA, section 3 WMA stipulates that the following criteria have to be taken into account:

- a licence may not be in contradiction to Austria's obligations under international law or the foreign policy interests of Austria;
- the export or transit shall not take place to a region where an armed conflict exists or is expected to break out, or with other dangerous persistent tensions;
- there is no danger that - in view of severe and reiterated human rights violations in the country concerned - the material will be used for the suppression of human rights;
- observance of embargoes of the UN Security Council;
- it does not contravene public security or military considerations;
- there are no other comparable important objections.

Individual applications for war material as defined in the War Material Regulation decreed by the Austrian Government on 22 November 1977, Federal Law Gazette No. 624/1977 are assessed and decided according to the criteria of Section 3 WMA as described above and taking into account the EU Council Common Position 2008/944/CFSP adopted on 8 December 2008 defining common rules governing control of exports of military technology and equipment.

Exports of war material by the Minister of Defence and Sports, the Minister of the Interior, the Minister of Justice (e.g. Prison Guards) and the Minister of Finance (e.g. Customs Police) are subject to the approval of the Federal Government according to Section 5 Para. 2 WMA.

All denials issued by the Federal Ministry of the Interior can be appealed against within 6 weeks of receipt by the applicant at the High Administrative Court.

The legal basis for the export control of military equipment not listed as war material ("non-war material") is the Austrian Foreign Trade Act, Federal Law Gazette No. I, 50/2005, as amended by Federal Law Gazette I No. 22/2008, short FTA. Section 1 of the Decree enacted on the basis of the Foreign Trade Act, Federal Law Gazette part II No. 121/2006, stipulates that an export of goods listed in this Decree to a destination outside the customs territory of the European Union needs a licence.

According to Section 5 of the Foreign Trade Act, a licence has to be refused, if it would violate Austria's international obligations. A licence shall be granted, if necessary in connection with suitable requirements, if there is no reasonable cause for assuming that:

- the goods would be used for internal repression in the country of destination;
- the goods would prolong or provoke armed conflicts in the country of destination or aggravate existing tensions or conflicts:
- the recipient would use the goods for aggressive purposes against another country or for forcibly enforcing a territorial claim or would otherwise endanger the security interests of another country or the stability of the region;
- the goods would be used for supporting terrorism or international crime;
- the goods would be used for serious violations of international humanitarian law;
- the goods would be diverted in the country of destination to serve a purpose other than the stated purpose or would be re-exported from the country of destination;
- granting the licence would infringe other interests of Austria's internal or relations,
- the permit would substantially interfere with the lasting development of the country of destination.

Individual applications are assessed and decided by the criteria of Section 5 FTA and taking into account the EU Council Common Position 2008/944/CFSP. Licences are issued by the Federal Ministry of Science, Research and Economy after consulting with other competent Austrian authorities.

All denials issued by the Federal Ministry of Science, Research and Economy can be appealed against within 6 weeks of receipt by the applicant at the High Administrative Court.

Goods that might be used for weapons of mass destruction (dual use goods) are covered by Council Regulation (EC) 428/2009 as amended. This regulation includes in its Article 4 a "catch-all clause" for items not listed in Annex 1 of this Regulation. According to section 2 of the Austrian Foreign Trade Act Decree, an exporter has to notify the Federal Ministry of Science, Research and Economy if he or she has reason to believe that an intended export might be used for weapons of mass destruction or for the installation into military goods in countries under EU-, OSCE- or UN-embargo. Exports of items not listed in Annex 1 are also subject to export controls, if the Federal Ministry of Science, Research and Economy informs the exporter that the goods could be destined for the mentioned purposes.

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.

In October 2005 the new Austrian Foreign Trade Act 2005 entered into force, implementing export control regulations of various international fora, to which Austria is a member. The Federal Act on the Export, Import and Transit of War Material of 18 October 1977, Federal Law Gazette No. 540/1977 was lastly amended in 2005 (cf. Federal Law Gazette I No. 50/2005,).

By this amendment, arms brokerage activities defines the brokerage of war material as a transaction where an Austrian citizen with domestic residence or an entity headquartered in Austria or any other person or entity acting from Austrian territory

allows or arranges the transfer of goods outside the customs territory of the European Union to another country outside the customs territory of the European Union.

For the issuance of brokering licences the same conditions apply as for the issuance of export or transit licences. Para 4 was inserted in the WMA referring to information procedures for denied export licences in accordance with EU Council Common Position 2008/944/CFSP.

The transit of war material by foreign forces through Austria or through Austrian airspace, which had been treated under the provisions of § 3 (1) of the WMA 1977, was made the subject of a separate "law on troop transit" (Federal Law Gazette I, Nr. 57/2001). In enacting this new law, a clear distinction was made between the commercial transit of war material and the transit of war material by foreign forces.

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

- EU Council Common Position 2008/944/CFSP;
- User's Guide to the EU Council Common Position 2008/944/CFSP;
- Eleventh Annual Report according to Article 8(2) of the EU Council Common Position 2008/944/CFSP;
- Council Regulation (EC) Nr. 428/2009 for dual use items;
- EU Common Military List (2010);
- EU Council Common Position on Brokering (2003);
- EU Joint Action on SALW (2002) ;
- EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms;
- Wassenaar Arrangement;
- ECOWAS Moratorium on the Importation, Exportation and Manufacture of Light Weapons (1998);
- UN Programme of Action on SALW (2001);
- UN, OSCE and EU-arms embargoes.

4. The procedures for processing an application to export conventional arms and related technology:

- who is the issuing authority?**
- what other authorities are involved and what is their function?**
- who deals with compliance?**

The Federal Ministry of the Interior is the licensing authority for applications for the import, export or transit of war material in agreement with the Federal Ministry for Europe, Integration and Foreign Affairs and after consulting the Federal Ministry of Defence and Sports. The decision has to be taken without undue delay, at the latest six months after receipt of the request (cf. Section 73 Para. 1 of the General Act on Administrative Procedure, Federal Law Gazette No. 51/1991, as amended).

The Federal Ministry of Science, Research and Economy is the licensing authority for applications for the export of military equipment not listed as war material ("non-war

material”). The decision is taken after consulting the Federal Ministry for Europe, Integration and Foreign Affairs, the Federal Ministry of the Interior and the Federal Ministry of Defence and Sports.

According to para 32 of the FTA the Federal Ministry of Science, Research and Economy can conduct audits within the premises of companies assisted by the Federal Ministry of Finance (Customs). The aim of these audits is to enforce that licence obligations are observed by exporters.

5. Lists of conventional weaponry under national export controls and the basis for their control. If applicable, report changes and/or updates to the data provided in 1995.

The list of military equipment not listed as war material (“non-war material”) is defined in Annex I to the FTR and can be obtained online on the homepage of the Federal Ministry of Science, Research and Economy link “www.bmwf.wg.at”, Ausfuhrkontrolle, konventionelle Waffen und Militärgüter, Anlage der AußHV 2005 i.d.g.F. (BGBl. II Nr.121/2006) - (Militärgüterliste). On March 17th, 2006 a new Foreign Trade Regulation, Federal Gazette Part II No 121/2006 entered into force, updating and adapting the list to the wording of the EU Common Military List. The list of war material is defined in the War Material Regulation decreed by the Austrian Government on 22 November 1977, Federal Law Gazette No. 624/1977. Both lists combined are practically identical with the Wassenaar Munitions List and the EU Common Military List.

6. Principles and national regulations on the destination or end-user of the equipment.

Is there a complete erga omnes system or a published list of

- destinations of concern?

- embargoed countries?

- differentiation between destinations (e.g., is there any preferential treatment of (groups of) countries)?

Publicly accessible lists of UN, OSCE and EU arms embargoes are available via the internet on the homepage of the Austrian Federal Ministry of Science, Research and Economy (www.bmwf.wg.at).

UN, EU and OSCE-embargoes are referred to in the relevant Austrian laws in the following manner:

Section 3 of the War material Act stipulates that – among other criteria – the authorities have to take into account that “a licence may not be in contradiction to Austria’s obligations under international law or the foreign policy interests of Austria” and “observe the embargoes of the UN Security Council”.

According to Section 5 of the Foreign Trade Act, a licence has to be refused, if it would violate Austria’s international obligations. The criteria for issuing a licence as described in Section 1 above, second sentence apply. Apart from UN, EU and OSCE embargoes Austria does not maintain any nationally defined list of countries to which arms exports are restricted or denied since every single licence application is examined individually, i.e. on a case-by-case basis against the criteria of the

applicable national law and the circumstances prevailing at the time of application as well as by taking into account the EU Council Common Position 2008/944/CFSP.

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. If applicable, please specify any verification of the end-user certificate and/or non-re-exportation clauses before and after delivery.

In order to ensure that equipment actually reaches the authorized end user, the purpose of the end use and the actual demand of the equipment are checked prior to issuing a licence. End user certificates (EUC) are required in line with international obligations as well as the national law. No export licence is granted if there is a “clear risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions” as stipulated in criterion 7 of the EU Council Common Position 2008/944/CFSP. The Austrian authorities take into account the relevant information available under the Council Common Position 2008/944/CFSP as to every single licence application.

The export of arms always requires an end use certificate, an end use statement, an import certificate or another official document (depending on the purpose of end use, the end user, the country of destination and the documents the government of the country of destination issues). Documents are to be supplied in the original, mostly no fax or copies are accepted.

The licensing authority may require a delivery verification certificate, issued by the country of destination, or if such a certificate is not available, a certificate of entry, i.e. submission of relevant customs papers issued by the recipient country. In case of exports to governmental organisations a delivery verification certificate issued by the end-user may be required.

The amendment of the WMA Federal Law Gazette I Nr. 72/2011 created the possibility to complement a licence for a transfer to another EU member state with a restriction of re-export to a third country or countries, making the re-export conditional on Austria's agreement.

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

The transit of war material as defined in the War Material Regulation decreed by the Austrian Government on 22 November 1977, Federal Law Gazette No. 624/1977 is subject to the same licensing procedure by the Austrian authorities as the export or import of war material (cf. 1 above).

In transposition of the ICT Directive 2009/43/43, the WMA has been amended to simplify licensing procedures within the EU.

Currently, the WMA does not distinguish between the control of war material in transit to another EU Member State or to a third non-EU country. The WMA is at present under revision together with the transposition of the ICT Directive 2009/43/EC.

The Austrian Foreign Trade Act, Federal Law Gazette No.50/2005 stipulates a licensing procedure for the transit of goods covered by the Common Military List of military equipment not listed as war material ("non-war material). The FTA defines transits as any transport of goods through the Community Customs Territory, with these goods not being subjected to a treatment or put to a use permitted under customs law other than the external transit procedure or merely transferred to a free zone or bonded warehouse where they do not have to be registered in approved inventories, provided that the transport passes through the Federal Territory. The FTA is at present under revision together with the transposition of the ICT Directive 2009/43/EC.

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

Any entity or individual dealing in war material or weapons has to obtain a licence for trade in war material / weapons. Entities do not need a priori governmental authority to enter into contract negotiations. The licence is only granted, if the applicant can certify qualification and reliability according to the Industrial Code ("Gewerbeordnung").

10. Policy on the revocation of export licences once they have been approved; please list any published regulations.

Any export licence granted under the WMA or the FTA has to be revoked by the authority if conditions prevailing at the time of granting the licence have changed substantially.

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

Non-compliance with the FTA or the WMA constitutes a criminal offence punishable with up to five years of imprisonment if the offence is intentional and with up to two years of imprisonment or payment of a fine of up to 360 daily rates if by negligence. In addition, goods intended to be illegally exported may be declared forfeited.

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

Under the WMA, the Federal Ministers of Defence and Sports, of the Interior, of Justice and of Finance as well as those under their command need the agreement of the Federal Government for issuing an export licence. According to § 5 (2) WMA this agreement is not necessary for the export of war material, if it is for repair, modification, maintenance, sport events by military or police, for protection or escort services, for exhibition services, or for exercise and training for those under the Ministers' command; no licence is required to return war material after its import for testing and presentation.

According to § 5 (3) WMA no licence is required for the transfer of war material to another EU member state, if it is for the exclusive purpose of presentation, exhibition, servicing or repair, or the re-transfer after such activity. This is not valid for war material subject to specific restrictions such as anti-personnel mines or cluster munition.

No licence is required for the temporary export of one pistol for personal use by the traveller (who must have a licence to own the pistol) and for the temporary export of three hunting rifles and ammunition for personal use. All weapons have to be reimported after the end of the travel.

13. Licences for temporary export (e.g., demonstrations or testing), the period allowed and any special conditions attached to the licence, including verification of return procedures.

As neither the WMA nor the FTA stipulates any measures to assure the return of the exported goods, applications for licences for temporary export have to be assessed according to the same criteria as export licences.

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

The standard conditions under which a licence is issued are defined on a case by case basis. Conditions are inter alia: End user certificates, import licences, delivery verification certificates and other official documents.

Other conditions concern the itinerary of the shipment. Conditions for export prohibit shipment via embargo countries.

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

The Austrian authorities currently issue individual licences valid up to one year for each single application.

In transposition of ICT Directive 2009/43/EC, the possibility for issuing general licences valid for up to three years for transfers within the EU has been created. However, these general licences, too, the general criteria for the granting of licences are fully applicable.

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

Any potential exporter may address the licensing authorities – or the Federal Ministry for Europe, Integration and Foreign Affairs (as national point of contact for the EU Council Common Position 2008/944/CFSP) – on the likelihood of approval for a possible transaction; however, the information provided is not of a legally binding character. The final decision can only be taken on the basis of an official and individual application against the criteria of the applicable national law and the circumstances prevailing at the time of application as well as by taking into account the EU Council Common Position 2008/944/CFSP.

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

The Federal Ministry of the Interior issues an average about 240 licences (WMA) annually, with two officials employed in the licensing procedure. The Federal Ministry of Science, Research and Economy issues on export of military equipment not listed as war material (“non-war material”) an average of 1500 licences annually, with 5 officials employed in the licensing procedure.

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.

Under § 3a WMA the „*National Security Council*” has to be informed by the Federal Government within the first six months of each year of reports and data transmitted to EU Institutions and Member States, the UNSG, the Secretary General of the Wassenaar Arrangement, other states, International Organisations or Intergovernmental Institutions.

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

Exporters can obtain all relevant information governing conventional arms transfers via the Austrian Law Information System in the internet, via the homepage of the Federal Ministry of Science, Research and Economy or in personal contact with the licensing authorities.