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Permanent Mission of the Republic of Poland
to the United Nations Office and
the International Organizations in Vienna

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The Permanent Mission of the Republic of Poland to the United Nations Office and International Organisations in Vienna presents its compliments to all Delegations and Permanent Missions to the OSCE and to the Conflict Prevention Center and has the honor to submit in accordance with Decision 13/97, 08/98 and 08/08 of the Forum for Security Cooperation Information Exchange on Conventional Arms Transfers of the Republic of Poland as well as in accordance with the Decision No 20/95 of the Forum for Security Cooperation responses to the Questionnaire on Conventional Arms Transfers for the year 2017.

The Permanent Mission of the Republic of Poland to the United Nations Office and the International Organizations in Vienna avails itself of this opportunity to renew to the all Delegations and Permanent Missions to the OSCE and to the Conflict Prevention Center the assurances of its highest consideration. AB

Vienna, 8 July 2019



To:

All Delegations and Permanent Missions to the OSCE in Vienna
The Conflict Prevention Center

Vienna

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

Reporting country: **POLAND**

Legal state for 30 June 2019

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

Poland fully follows principles and rules on the export of conventional arms and related technology set by the Arms Trade Treaty and the European Union's Council Common Position 008/944/CFSP of 8 December 2008. While considering export applications the following criteria are taken into account:

Criterion One: Respect for the international obligations and commitments of Member States, in particular the sanctions adopted by the UN Security Council or the European Union, agreements on non-proliferation and other subjects, as well as other international obligations.

Criterion Two: Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law.

Criterion Three: Internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts.

Criterion Four: Preservation of regional peace, security and stability.

Criterion Five: National security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries.

Criterion Six: Behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law.

Criterion Seven: Existence of a risk that the military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions.

Criterion Eight: Compatibility of the exports of the military technology or equipment with the technical and economic capacity of the recipient country, taking into account the desirability that states should meet their legitimate security and defence needs with the least diversion of human and economic resources for armaments.

Poland applies in licensing process Wassenaar Arrangement's best practices and guidelines. The most important are:

Elements for Objective Analysis and Advice concerning Potentially Destabilising Accumulations of Conventional Weapons

Best Practice Guidelines for Exports of SALW

Elements for Export Controls of MANPADS

Elements for Effective Legislation on Arms Brokering

Best Practices for Implementing Intangible Transfers of Technology Controls

Best Practices to Prevent Destabilising Transfers of SALW through Air Transport

Best Practice Guidelines on Subsequent Transfer (Re-export) Controls for Conventional Weapons Systems contained in Appendix 3 to the WA Initial Elements

Introduction to End User/End Use Controls for Export of Military-List Equipment

End-Use Assurances Commonly Used – Consolidated Indicative List

Best Practice Guidelines on Subsequent Transfer (Re-export) Controls for Conventional Weapons Systems contained in Appendix 3 to the WA Initial Elements

Best Practices for Disposal of Surplus/Demilitarised Military Equipment

Statement of Understanding on Arms Brokerage

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.

As of 31.12.2016 the following laws governed in Poland the export of conventional arms and related technology:

The act of 29 November 2000 on foreign trade in goods, technologies and services of strategic importance to the security of the State and to maintaining international peace and security (Journal of Laws 2017, item 1050).

REGULATION OF THE MINISTER OF ENTREPRENEURSHIP AND TECHNOLOGY of 28 February 2018 on the list of military goods, for which trade in requires authorisation (OJ no. 482), which is consistent with the Common Military List of the European Union adopted by the Council on 6 March 2017 (OJ C 97, 28.3.2017, p. 1–33)

REGULATION OF THE MINISTER OF ECONOMY of 30 July 2012 on the model of import certificate (Journal of Laws 14 August 2012, Item 923)

REGULATION OF THE MINISTER OF ECONOMY of 30 July 2012 on the models of applications and licences for trade in items of strategic importance (Journal of Laws, 14 August 2012, Item 924)

ORDINANCE BY THE MINISTER OF ENTREPRENEURSHIP AND TECHNOLOGY of 3 April 2018 on the scope of information to be submitted to the trade control authority by entities trading in items of strategic importance based on general licences (Journal of Laws 18 April 2018 Item 747)

ORDINANCE OF THE MINISTER OF FINANCE of 25 May 2017 on the national general authorization (Journal of Laws 30 May 2017 Item 1045)

ORDINANCE BY THE MINISTER OF ECONOMY of 10 May 2013 on the records of trade in items of strategic importance (Journal of Laws 29 May 2013, Item 619)

ORDINANCE OF THE MINISTER OF FOREIGN AFFAIRS of 2 December 2013, on the specimen of report on the actual export of armaments (Journal of Laws, 18 May 2013, Item 1576)

REGULATION OF THE MINISTER OF ECONOMY of 12 April 2013 on the list of certification bodies authorized to perform compliance certification and compliance audits of the internal control system (Journal of Laws, 6 May 2013 Item 525)

ORDINANCE BY THE MINISTER OF ECONOMIC DEVELOPMENT AND FINANCES of 21 February 2017 on customs offices authorised to clear items of strategic importance for export, import, or transit (Journal of Laws, 27 February 2017, Item 365)

ORDINANCE OF THE MINISTER OF FINANCE of 1 July 2013 on the model delivery verification certificate and the method of keeping records of issued certificates (Journal of Laws, 4 July 2013 Item 774)

ORDINANCE OF THE MINISTER OF ECONOMIC DEVELOPMENT AND FINANCES of 17 February 2017 amending the ordinance on the model delivery verification certificate and the method of keeping records of issued certificates (Journal of Laws, 24 February 2017 Item 346)

ORDINANCE BY THE PRESIDENT OF THE COUNCIL OF MINISTERS of 29 April 2014 on the specimen of application for the issuance of reliability certificate of a recipient of armaments transferred as part of general licences for intra-community transfer, issued by authorised bodies of other European Union member states (Journal of Laws, 13 May 2014 Item 601)

ORDINANCE BY THE PRESIDENT OF THE COUNCIL OF MINISTERS of 29 April 2014 on the specimen of reliability certificate of a recipient of armaments transferred as part of general licences for intra- community transfer, issued by authorised bodies of other European Union member states (Journal of Laws, 13 May 2014 Item 602).

REGULATION OF THE MINISTER OF ECONOMIC DEVELOPMENT AND FINANCES of 25 May 2017 on national general authorisation (OJ no. 1045), which established four new national general export authorisations.

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

The Arms Trade Treaty. Commitments transpiring from participation in export control regimes: WA and MTCR

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?

Licensing authority: minister competent for Economy

Advisory bodies:

Minister of Foreign Affairs

Minister of Public Finance

Head of Internal Security Agency

Head of Foreign Intelligence Agency

Minister of Interior

Head of Military Intelligence Service

Head of Military Counter Intelligence Service

President of National Atomic Energy Agency

Compliance is the shared responsibility of licensing authority and enforcement agencies.

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 conventional weaponry under national export controls is specified by Regulation of the Minister of Entrepreneurship and Technology of 28 February 2018 on the list of military goods, for which trade in requires authorisation (OJ no. 482), which is consistent with the Common Military List of the European Union adopted by the Council on 6 March 2017 (OJ C 97, 28.3.2017, p. 1–33);

The basis for the control is: The act of 29 November 2000 on foreign trade in goods, technologies and services of strategic importance to the security of the State and to maintaining international peace and security (Journal of Laws 2017, item 1050).

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 (group of) countries)?

There are no national lists of destinations of concern or embargoed countries in Poland's legal system. There is a preferential treatment of EU Member States, and to certain extent, Wassenaar Arrangement Participating States.

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.

Article 9 of the act of 29 November 2000 on foreign trade in goods, technologies and services of strategic importance to the security of the State and to maintaining international peace and security (Journal of Laws 2017, item 1050) sets the obligation of providing end-user certificate while applying for export license. Art 23 of the Act provides detailed information on the content of end-user certificate and, among others, commitment of non-transfer without consent of Poland's export control authority.

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

Article 3 of The act of 29 November 2000 on foreign trade in goods, technologies and services of strategic importance to the security of the State and to maintaining international peace and security (Journal of Laws 2017, item 1050) provides the following definition:

transit – transit within the meaning of Article 2(7) of Regulation No. 428/2009 or, in the case of military goods, movement between a European Union Member State, the Republic of Poland excluded, and a third country or movement between third countries through the territory of the Republic of Poland;

Depending on particular circumstances of a transfer transshipment is covered either by license for transit or brokering services.

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?

There is no pre-licensing procedure in Poland.

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

Any license may be revoked on conditions specified in art. 15 and 16 of The act of 29 November 2000 on foreign trade in goods, technologies and services of strategic importance to the security of the State and to maintaining international peace and security (Journal of Laws 2013, item 194).

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.

1) Administrative sanctions

- Any legal person carrying out trade without a valid authorisation shall be liable to a financial penalty of up to PLN 200,000 imposed by the trade control authority by a relevant administrative decision.

2) Criminal penalty

- Any person pursuing or committing trade without a relevant authorisation or contrary to conditions set forth in the authorisation, however unintentionally, shall be punished by imprisonment for a term of 1 year to 10 years.

- If a person is convicted of the referred above offences, the court may issue a forfeiture order in respect of items of strategic importance or other items used or designated for use in order to commit an offence, or resulting either directly or indirectly from such offence, including cash and securities, even if these items are not the offender's property.

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

Peacekeeping missions and military exercises.

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.

For transfers under general licences – the period is 3 years

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

The following documents are required to proceed with licensing procedures:

- filled in application form,
- declaration of a concession or licences for holding goods of strategic importance or pursuing activity connected with the trade applied for, if holding such concessions

- or licences is required by other acts, along with precise identification features of these documents; a draft trade agreement,
- draft agreement or trade agreement, if required for a given trade, or letter of intent or a commercial inquiry;
 - a copy of ICP certificate,
 - an import certificate or end user certificate,
- a consent of the competent foreign authority for specific disposal of the good, if the importer or end user committed to obtaining such consent, or declaration that the applicant has no knowledge on the such a commitment.

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

Individual licence – a licence granted to one specific exporter for one end user or importer or recipient in a third country and covering a specified quantity and value of specific goods of strategic importance;

Global licence - a licence granted to one entity in relation to one or more end users, importers or recipients in one or more third countries for a specified quantity or category of goods of strategic importance;

General licence – a licence published by export control authority, covering less sensitive goods and destinations, eg. for transfers within European Union

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

There is no pre-licensing procedure in Poland. Basing on art 10 of the act of 29 November 2000 on foreign trade in goods, technologies and services of strategic importance to the security of the State and to maintaining international peace and security (Journal of Laws 2017, item 1050), an entrepreneur is eligible to request a binding interpretation regarding the necessity to obtain a licence for export of specific, strategic goods.

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

About 2000 licences, including 700 licences for “new exports” of the arms. Staff – 10 people in the licencing unit, without the staff of the advisory bodies.

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.

The Minister of Foreign Affairs publishes an annual report on export of arms and military equipment from Poland.

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

All legal acts are published in the Official Journal.