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Permanent Mission of Ukraine
to the International Organizations in Vienna

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The Permanent Mission of Ukraine to the International Organizations in Vienna presents its compliments to the Permanent Missions and Delegations to the OSCE and to the Conflict Prevention Centre, and has the honour, in accordance with the FSC Decision No 20/95, to submit herewith the response of Ukraine to the OSCE Questionnaire on Conventional Arms Transfers.

The Permanent Mission of Ukraine to the International Organizations in Vienna avails itself of this opportunity to renew to the Permanent Missions and Delegations to the OSCE and to the Conflict Prevention Centre the assurances of its highest consideration.

Vienna, 19 June 2019



**To all Permanent Missions and Delegations to the OSCE
To the Conflict Prevention Centre,
OSCE Secretariat**

VIENNA

**Ukraine's answers to the OSCE Questionnaire FSC.DEC/20/95
on Participating States' Policy and/or National 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.

The state export control policy of Ukraine over military and dual-use goods is based on the following principles:

- priority of national interests of Ukraine;
- ensuring compliance with international obligations of Ukraine in nonproliferation and export control sphere;
- establishing the state export control over international transfers of military and dual use goods; measures to prevent the misuse of the above-mentioned goods for illegal purposes;
- law based governance;
- application of the export control only within necessary and sufficient scope;
- export control procedures and principles harmonization with international standards;

The state export control is implemented by means of:

- identification and classification of goods against the control lists;
- licensing international transfers of goods that are subject of export control and negotiations over foreign trade agreements (contracts) with the countries of concern;
- customs control of goods intended for international transfers;
- enforcement of penalties for export control violations.

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

The Law of Ukraine "On the state control over international transfers of military and dual-use goods" (with amendments);

the Decree of the Cabinet of Ministers of Ukraine of 20 December, 2003 No. 1807 "On Approval of Order of State Control over International Transfers of Military Goods" (with amendments);

the Decree of the Cabinet of Ministers of Ukraine of 17 July 2003 No. 1080 "On Approval of the State Certification of Internal Compliance Program Established by an Entity Involved in International Transfers of Goods" (with amendments);

the Decree of the Cabinet of Ministers of Ukraine of 8 June, 1998 No. 838 "On Approval of the Procedure of Authorization of Business Entities to Conduct Export and Import of Military Goods and Goods Containing Information

Constituting a State Secret” (with amendments);

the Decree of the Cabinet of Ministers of Ukraine of 6 June 2012 No. 500 “On Approval of State Export Control over Negotiations Regarding the Conclusion of Foreign Trade Agreements (Contracts) for the Export of Goods”.

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

Ukraine is a member-state of the UN, the OSCE and a party to the international export control regime the Wassenaar Arrangement. It’s export control legislation is based on the guidelines and principles of these international organizations governing the control over transfers of conventional arms.

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

The State Service of Export Control of Ukraine (SSECU) is the central executive body authorized to implement the state export control policy of Ukraine. The SSECU issues licenses and provides other administrative services in the field of state export control in the cases stipulated by the legislation.

Depending on the complexity of the issue and if an interagency coordination (approval) is necessary when considering whether to authorize a transfer of military or dual use goods to certain countries (countries that are subject to embargoes or sanctions) and some other issues requiring an interagency consultative co-operation the State Service of Export Control of Ukraine is authorized to involve different ministries and other state agencies such as the Ministry of Defense, the Ministry of Foreign Affairs, the Ministry of Economic Development and Trade of Ukraine (in case of transfer of technology).

The intelligence and enforcement agency could be involved to check an end-user and end-use or an intermediary and provide information on potential diversion.

There is also the Interagency committee on military-technical cooperation and export control policy under the National Security and Defense Council of Ukraine that gives recommendations to the SSECU on international transfers.

When making a decision the SSECU always gives priority to international commitments and obligations of Ukraine.

The main procedures in state export control sphere are the following:

- preliminary examination and registration at the SSECU of entities as entities making international transfers of goods;
- establishing an Internal Compliance Program by an entity involved in foreign trade and its certification by the SSECU;
- getting authorization from the Cabinet of Ministers of Ukraine to export, import of military goods (including arms brokering) and goods containing information that constitutes state secrets;

- getting a license (conclusion) to enter into negotiations for foreign economic agreements or contracts with entities concerning the export of military, dual-use or not-listed goods to a destination subject to embargo;
- reporting on results of the negotiations;
- obtaining a license (permit) for export;
- customs control;
- delivery control;
- reporting on the use of a license granted;
- verification of an end-use on compliance with the declared purposes;
- enforcement of penalties, when appropriate.

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

The national List of military goods is approved by the Decree of the Cabinet of Ministers of Ukraine of 20 December, 2003 No. 1807 “On Approval of Order of State Control over International Transfers of Military Goods” (with amendments). It completely corresponds to the Munitions List of the Wassenaar arrangement.

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

When considering documents submitted for a license for international transfers of goods that are subject to export control specific attention is given to a guarantee that the items will be used in compliance with their stated purpose. From a foreign importer it is required to submit an end-user certificate that has guarantees of the specific end-use, specific location of the use and also guarantees that it won't be retransferred to a different end-user without approval of a Ukrainian exporter. In some cases there could be required guarantees from an authorized state body of a country-recipient.

Verification of an end-use has to be stipulated in the foreign trade agreement (contract).

Control over delivery into a recipient-country of goods exported from Ukraine is conducted on the basis of documents confirming the delivery and issued by an authorised state body of a recipient country.

The Decree of the Cabinet of Ministers of 27 April, 1999 No. 920 “Procedures for control over the use of goods subject to the state export control for stated purposes” provides national procedures of state control concerning verification of the end-use of exported goods according to declared purposes.

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

In accordance with the Law of Ukraine “On State Control over International Transfers of Military and Dual-Use Goods” an end-user certificate is a document that contains a guarantee of the specific end-use of the exported goods, the specific location of the use and also a guarantee that they won’t be retransferred to a different end-user without approval of a Ukrainian exporter and the SSECU.

An end-user certificate is signed and stamped (if applicable) by the head of an organization.

Control over delivery into a recipient country of goods exported from Ukraine is conducted on the basis of documents confirming the delivery and issued by an authorised state body of a recipient country.

According to the export control legislation of Ukraine there are cases when an application for a license, a conclusion or an international import certificate is left without consideration. They are the following:

- an application for a license is signed by an unauthorized person;
- there were not submitted all the documents required or documents submitted don’t meet specific requirements.

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

The Law of Ukraine “On State Control over International Transfers of Military and Dual-Use Goods” defines transit as the transport of goods from one foreign state to another through the territory of Ukraine between two points or within a crossing point across the state border of Ukraine, except in cases where during transportation on the territory of Ukraine the ownership or the right to possession and use of the goods moves from one person to another in accordance with established procedures. Transit has to be authorized by the SSECU according to the established procedures.

The state control over transshipment is customs’ responsibility.

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

According to the legislation of Ukraine companies are obliged to seek official governmental authority from the SSECU to enter into negotiations to conclude a contract with foreign customers to export arms.

The procedures of the state export control over negotiations mean:

- receiving a conclusion issued by the SSECU allowing for the contractual negotiations with foreign entities concerning the transfer of military or

- dual-use goods and not-listed goods to a destination subject to embargo under international obligations of Ukraine;
- concluding a contract with a foreign economic entity taking into account the recommendations of the Cabinet of Ministers Decree of 6 June 2012 No. 500 “On Approval of State Export Control over Negotiations Related to the Conclusion of Foreign Trade Agreements (Contracts) for the Export of Goods”;
 - reporting on the outcome of negotiations to the SSECU;
 - liability of entities for infringement of the adopted procedures of conducting negotiations.

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

Ukraine denies in issuing the license, suspends or revokes a license in the following cases:

- the necessity to ensure national interests or comply with international obligations of Ukraine;
- when business entity has violated legislation in particular in export control sphere;
- the need to perform additional expertise of submitted documents by the SSECU;
- suspension of business activity of an entity;
- entity's bankruptcy;
- registration of an entity is canceled.

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.

For violation of export control rules and procedures there've been established criminal, administrative and civil responsibilities that are presented in related articles of the Criminal Code of Ukraine (art. 333), the Administrative Code of Ukraine (art.188¹⁷ and 212⁴), and the Act of Ukraine "On State Control over International Transfers of Military and Dual-Use Goods" (part IV Prevention of law infringements and responsibility in the field of the state export control).

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

There are not cases in the legislation of Ukraine when a transfer of conventional arms does not require a license.

13. License for temporary export (e.g. demonstrations or testing), the period allowed and any special conditions attached to the license, including

verification of return procedures.

In accordance with the legislation of Ukraine temporary export requires a license (conclusion) from the SSECU.

To receive a license for temporary export of goods for demonstration at exhibitions and fairs, advertising, testing and for other purposes (if it does not imply the transfer of the ownership) the entity has to submit the following documents:

- the document containing the name of an exhibition or a fairs, a place and terms of exhibiting or testing of goods as well as obligations (guarantees) concerning return of the goods back to Ukraine without change of their quantity and quality characteristics;
- the authenticated copies of documents in accordance with which the temporary export of goods is conducted (an invitation to participate in exhibition or in a fair, a foreign trade agreement (contract), an agreement with a foreign partner), and a secrecy degree certificate for goods intended for temporarily export.

To receive a license for temporary export of goods for conducting military exercises carried out by the Armed Forces of Ukraine outside its territory (if it does not imply the transfer of the ownership) the entity has to submit the following documents:

- the authenticated copies of documents in accordance with which the temporary export of goods is conducted;
- a secrecy degree certificate for goods intended for temporarily export.

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

The specific forms of license documents are provided in the SSECU's Order of 26 June 2007 No. 95 approved by the Ministry of Justice of Ukraine.

The standard conditions includes such as reports on actually performed export, delivery to a destination country, use for declared purposes.

In addition to standard conditions there also could be special conditions for transfers, such as:

- to perform on-site verification of the end-use of the exported goods with participation of relevant governmental agencies;
- freight forwarding of the exported goods with participation of governmental agencies;
- etc.

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

The Law of Ukraine "On state control over international transfers of military

and dual-use goods” defines 2 types of licenses “permit” and “conclusion” in the following ways:

- permit - a document issued by the SSECU, which grants the right to export or import goods. A permit may be single, general, or open;

- conclusion - a document issued by the SSECU, which grants the right for temporary inbound or outbound movement of goods or their transit, the holding of negotiations related to the conclusion of foreign trade agreements (contracts) on international transfers of military goods or the export of dual-use goods and not-listed goods to states for which a partial embargo has been established for the supply of such goods. The conclusion may be single, general, or open.

Permits and conclusions can be as follows:

- single permit/conclusion - a permit or conclusion, which is given to a registered entity to conduct negotiations or the implementation of a specific international transfer of goods to a specified end-user, indicating their name, quantity, cost, special terms of delivery, the name of a foreign subject of economic or other activities, the state of destination or origin of the goods and their end consumers;

- general permit/conclusion - a permit or conclusion, which is given to a registered entity for multiple negotiations or the implementation of international transfers of goods to a specific end-user, indicating their name, special terms of delivery, the name of a foreign subject of economic or other activities, states of destination or origin of goods, and their end-user;

- open permit/conclusion - a permit or conclusion, which is given to a registered entity for multiple negotiations or international transfers of goods, indicating only their name, special terms of delivery and the name of the state of destination or origin of goods.

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

The procedure of registration at the SSECU is intended to rise awareness of entities in export control requirements and restrictions as well as prevent potential violations. Since together with registration certificate entities get explanatory letter which contains the list of the UNSC resolutions and national restrictive regulations applied to transfers to countries of concern, general requirements, information on what constitutes a violation and. It is also a guidance/a roadmap what to do next to get a license.

To promote effectiveness of passing licensing procedures by entities the SSECU holds seminars and studies on export control issues.

Information about license procedures is regularly put on the web-site of the SSECU (www.dsecu.gov.ua).

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

The average number of export license applications received by the SSECU:

1200 per year;

The average number of export licenses issued the SSECU: 1100 per year.

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.

According to the international obligations of Ukraine the SSECU regularly submits reports on export/import of conventional arms to the UN, OSCE, to the Secretariat of the Wassenaar Arrangement. Besides, abovementioned information is submitted to the Verkhovna Rada (Parliament) of Ukraine and also is placed on the web-site of the SSECU (www.dsecu.gov.ua).

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

All guidelines governing conventional arms transfers are nationally published in Ukraine.