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Note Verbale

The Permanent Mission of the Federal Republic of Germany to the Organization for Security and Cooperation in Europe, Vienna, presents its compliments to all Permanent Missions and Delegations to the OSCE and to the Conflict Prevention Centre and has the honour, with reference to the Decision No 20/95 of the Forum for Security Cooperation, to enclose a copy of the 2021 return submitted by the Government of the Federal Republic of Germany to the Questionnaire on OSCE Participating States' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology.

The Permanent Mission of the Federal Republic of Germany to the OSCE, Vienna, avails itself of this opportunity to renew to all Missions and Delegations of participating States to the OSCE and to the Conflict Prevention Centre the assurance of its highest consideration.



Vienna, 09 June 2022

- To
- all Permanent Missions / Delegations to the OSCE
and to
 - the Conflict Prevention Centre

Vienna

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

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Table of Contents

		Page
Question 1	Basic principles, policies and national practices on the export of conventional arms and related technology	3
Question 2	National legislation governing the export of conventional arms and related technology	4
Question 3	International agreements or guidelines, other than OSCE commitments, covering the export of conventional arms to which they are a party	5
Question 4	Procedures for processing an application to export conventional arms and related technology <ul style="list-style-type: none">- who is issuing authority?- what other authorities are involved and what is their function?- who deals with compliance?	5
Question 5	List of conventional weaponry under national export controls and the basis for their control	6
Question 6	Principles and national regulations on the destination or end-user of the equipment. Is there a complete <i>erga omnes</i> system or a published list of <ul style="list-style-type: none">- destinations of concern?- embargoed countries?- differentiation between destinations (<i>e.g.</i>, is there any preferential treatment of [groups of] countries)?	6
Question 7	Requirements for the provision of an end-user certificate in an export licence application, or of nonreexportation clauses, or of any other type of certification before and after delivery for conventional arms export contracts	6
Question 8	National definition of transit and transshipment (including free zones) of conventional arms, together with associated national legislation and compliance procedures	7
Question 9	The procedures governing companies wishing to export arms. Are companies obliged to seek official government authority to enter into contract negotiations or to sign contracts with foreign customers?	7
Question 10	Policy on the revocation of export licences once they have been approved	8
Question 11	Penal and administrative implications for any exporter failing to comply with national controls	8
Question 12	Any circumstances in which the export of arms does not require an export licence	9
Question 13	Licences for temporary export (<i>e.g.</i> , demonstrations or testing), the period allowed and any special conditions attached to the licence, including verification of return procedures	9
Question 14	Licence documents and any standard conditions attached to it	9
Question 15	Different types (<i>e.g.</i> individual, general, restricted, full, permanent, etc.) of licences and what they are used for	9
Question 16	Advice given to exporters as to licensability, such as the likelihood of approval for a possible transaction	10
Question 17	The average number of export licences issued annually and the staff engaged in the export licensing procedure	11
Question 18	Any other relevant information pertaining to the export of conventional arms and related technology, <i>e.g.</i> additional laws, reports to Parliament, special procedures for certain goods	11
Question 19	Are all guidelines governing conventional arms transfers nationally published	11

Question 1

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

The Federal Government pursues a restrictive and responsible policy on the export of military equipment. Decisions on licences for exports of military equipment are taken by the Federal Government on a case-by-case basis and in the light of the respective situation following careful scrutiny including consideration of foreign and security policy aspects. Decisions are based on the statutory requirements of the War Weapons Control Act, the Foreign Trade and Payments Act, and the Foreign Trade and Payments Ordinance, as well as on the Political Principles Adopted by the Government of the Federal Republic of Germany for the Export of War Weapons and Other Military Equipment as amended in 2019 (“Political Principles”), the Council Common Position of the EU defining common rules governing control of exports of military technology and equipment of 8 December 2008 as amended by Council Decision of 16 September 2019 (“EU Common Position”) and the Arms Trade Treaty (ATT). Respect for human rights in the recipient country plays an important role in the decision-making process. If there is sufficient suspicion that the military equipment will be misused for internal repression or other ongoing and systematic violations of human rights, a licence is not issued as a matter of principle.

In its decisions relating to export control policy, the Federal Government upholds its Alliance commitments and its responsibility for European and international security. Exports of military equipment, which serve cooperation with our Allies or help to equip them also, uphold Germany’s own security policy interests. This is also true of exports to third countries, which, for example, can help to secure borders or to tackle international terrorism.

When it comes to deciding upon exports, the Political Principles make a fundamental distinction between exports to EU, NATO and NATO-equivalent countries and to other (“third”) countries.

Exports of war weapons and other military equipment to NATO / EU countries (and to NATO-equivalent countries, i.e. Australia, Japan, New Zealand, Switzerland) serve Germany’s security interests and are generally not to be restricted. Exports of war weapons to third countries, in contrast, are only feasible if supported by specific foreign and security policy interests of Germany, bearing in mind the interests of the Alliance. In those cases, additional requirements may apply, e.g. consent to post-delivery end use verifications (“post-shipment controls”) for exports of small arms and light weapons.

The principles of Germany’s export policy are reflected in the fact that military equipment accounts for only a small proportion of total German exports. For example, exports of war weapons traditionally account for significantly less than 0.2% of all exports, and mainly go to countries, which are members of NATO or the OECD. This is particularly true for major military weapons systems (e.g. combat tanks, combat aircraft, and combat helicopters).

Question 2

National legislation governing the export of conventional arms and related technology

- (1) German arms exports are regulated by the *Basic Law*, the *War Weapons Control Act* and the *Foreign Trade and Payments Act* in conjunction with the *Foreign Trade and Payments Ordinance*. In addition, the Federal Government's "*Political Principles*" provide the licensing authorities with guidelines for the scope of and limits to exerting their discretion. In general, the national legislation distinguishes between two types of goods - war weapons and so called "other military equipment".
- (2) The export of "other military equipment" is subject to the *Foreign Trade and Payments Act* and the *Foreign Trade and Payments Ordinance*. The applicant is entitled to receive an export licence unless a licence cannot be issued because otherwise one of the principles of section 4 of the *Foreign Trade and Payments Act* in conjunction with section 8f of the *Foreign Trade and Payments Ordinance* (safeguarding the security of the Federal Republic of Germany, disruption to the peaceful coexistence of nations, considerable disruption to Germany's foreign relations) would be violated.
- (3) *Regulation (EU) No 258/2012 (Firearms Regulation)* implements Article 10 of the UN Firearms Protocol and is directly applicable in all EU Members States. However, the provisions of the *Weapons Control Act* remain applicable as well. The scope of the Firearms Regulation is defined in its Annex I, including firearms, their parts, essential components and ammunition.
The export of the goods listed in Annex I is subject to an authorization process.
- (4) The *War Weapons Control Act* stipulates that, in general, all handling of war weapons requires prior approval by the Federal Government; this requirement primarily refers to the manufacture, acquisition and transfer of actual control, to all types of transport (within Germany; import, export and transit), and to transactions by intermediaries, even if the war weapons do not enter German territory.

For the export of war weapons, a licence must first be obtained under the *War Weapons Control Act* ("transport authorization for the purpose of export") and then an export license pursuant to the *Foreign Trade and Payments Act and Ordinance*.

Pursuant to section 6 of the *War Weapons Control Act*, there is no legal right to receive a licence. Instead, such a licence may be denied if there is a danger that the war weapons will be used in a way which disturbs the peace, that international commitments entered into by Germany will be violated, or that the applicant is not sufficiently reliable to undertake the envisaged action. Beyond this, the issuance/refusal of an export licence is subject to the discretion of the Federal Government, which uses its discretion in line with the Political Principles outlined above. The validity period of such a permit is usually limited to two years.

Question 3

International agreements or guidelines, other than OSCE commitments, covering the export of conventional arms

Apart from the ATT and the EU Common Position mentioned in the answer to Question 1, Germany is bound by the Wassenaar Arrangement as a founding Participating State.

Question 4

Procedures for processing an application to export conventional arms / related technology:

- **(1) who is the issuing authority?**
- **(2) what other authorities are involved and what is their function?**
- **(3) who deals with compliance?**

(1) The Federal Ministry of Economic Affairs and Energy is the licensing authority for commercial exports of war weapons. The Federal Ministry of Defence is responsible for matters relating to the federal armed forces and G2G transfers. The Federal Ministry of Finance and the Federal Ministry of the Interior are also responsible for certain specific areas.

Therefore, applications from companies concerning weapons of war should be submitted in general to the Federal Ministry of Economic Affairs and Energy.

Applications for the export of “other military equipment” are to be submitted to the Federal Office of Economics and Export Control (BAFA), an agency of the Federal Ministry of Economic Affairs and Energy, which is the competent authority for issuing applications in this regard.

(2) The Federal Ministry of Economic Affairs and Energy decides upon applications for the export of war weapons to third Countries together with the Federal Foreign Office and the Federal Ministry of Defence. In politically sensitive cases, other ministries are also involved in the decision making.

BAFA presents politically sensitive export licence applications for “other military equipment” to the Federal Ministry of Economic Affairs and Energy and the Federal Foreign Office for a political assessment, which in some cases also involves other ministries.

The Federal Customs Administration is, inter alia, responsible for the monitoring of all transfers, i.e. import and export (goods entering or leaving the territory of the Federal Republic of Germany) and transit (transport of goods through the territory of the Federal Republic of Germany) of war weapons listed in the Annex of the War Weapon Control Act and of other military goods according to the Foreign Trade and Payments Law.

Additionally, the Federal Customs Administration is responsible for combatting and preventing violations of prohibitions and restrictions contained in foreign trade and payments legislation, including breaches of embargoes. These enforcement obligations include:

- clearing import, export and transit shipments at the customs offices;
- conducting audits of the exporting companies performed by local customs authorities;
- maintaining an automatic risk management system for all customs procedures,
- investigations (preliminary investigations and formal investigation procedures) by the Customs Investigation Service in order of the public prosecutor, and
- centralised risk management by the Customs Criminological Office (ZKA - Zollkriminalamt).

(3) The Customs Criminological Office (ZKA) is responsible for the risk management to prevent major violations of Foreign Trade and Payments Law and other prohibitions and restrictions concerning im-, export and transit of goods, as well as for the coordination of criminal investigation in this regard.

Question 5

List of conventional weaponry under national export controls and the basis for their control

- War Weapons List
- Part I section A of the Export List¹

Where necessary, these national lists are adapted to the international control lists, particularly to updates of the munitions list of the *Wassenaar Arrangement* and the Common Military List of equipment of the EU.

Question 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)?

For exports of conventional military equipment (war weapons and other military equipment), there is an *erga omnes* licensing requirement. A list of current embargoes can be found at https://www.bafa.de/DE/Aussenwirtschaft/Ausfuhrkontrolle/Embargos/embargos_node.html (only available in German). As for the distinction between EU, NATO and NATO-equivalent countries on the one hand and third countries on the other hand, reference is made to the answer to Question 1.

Question 7

Requirements for the provision of an end-user certificate in an export licence application or of nonreexportation clauses or of any other type of certification before and after delivery for conventional arms export contracts

In order to export war weapons or other military equipment, an end-user document has to be submitted in general along with the application. In case of end-user documents, a distinction is mainly made between official end-user certificates (exhibitor, government or authority of the country of destination), private end-user certificates (exhibitor, company or private individual), and International Import Certificates (IICs). Reexport clauses generally play a crucial role in end-user certificates. Details regarding the various types of end-user document can be found in the notification by the BAFA dated 01 August 2017.

¹ For further information see

https://www.bafa.de/DE/Aussenwirtschaft/Ausfuhrkontrolle/Gueterlisten/gueterlisten_node.html (only available in German).

Question 8

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

The legal definition of transit according to the *Foreign Trade and Payments Act* is met if the equipment is merely transported through German territory. “Transport” includes such reloading as it is necessary for technical transport-related reasons and – generally short – periods of storage; however, this does not apply to storage in a customs warehouse. In cases where the final destination of a delivery will change during the transporting process through Germany the legal basis for a transit will be forfeited and the shipment has to be treated furthermore as an export.

In case of transit/transshipment (including any interim storage) of weapons and their ammunition being subject to the *German War Weapons Control Act*, a licence pursuant to the *War Weapons Control Act* is required. Such licenses are issued upon application by the Federal Ministry of Economic Affairs and Energy. When deciding whether to issue a licence for the transit of war weapons, the Federal Government is guided by its general policy on arms exports. For certain transports of war weapons through German territory, provided that the transport starts in an EU country and ends in another EU country of final destination of the weapons, a general licence has been issued.

Transits/ Transshipments of weapons being listed in the National Military List, Part I Section A of the Export List of the German Foreign Trade and Payments Ordinance, are prohibited, when destined for countries being subject to arms embargoes. In specific case defined in the legislation, these transits/ transshipments are subject to licence requirements. In any case the licence has to be issued before the transit is initiated. In all other cases there are no licensing requirements for the transit or transshipment of military equipment and technology.

According to the *Weapons Act*, a licence is required for the transit through Germany – including reloading – of firearms subject to section 29 (1) of the *Weapons Act* (inter alia hunting and sports weapons, pistols and revolvers) and suitable ammunition (sections 30 and 33 of the *Weapons Act*). Licence and conditions for issuing are the same as for temporary (section 33 of the *Weapons Act*) as well as for final import (section 29 of the *Weapons Act*).

Question 9

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?

Apart from the specific licensing requirements applying to all handling of war weapons (*cf.* answer [2] to question 2 *supra*), Germany has no special registration system for companies seeking to export military equipment. When an application is submitted, an examination takes place incidentally to ascertain whether the respective company is reliable and has taken the necessary security measures to handle military equipment.

There is no special licensing requirement for entering into contract negotiations and/or the conclusion of contracts. Instead, a licence needs to be issued before the military equipment in question is actually exported (in case of war weapons, a licence is already required prior to that, for the manufacture and/or the acquisition of actual control over the war weapon to be exported).

According to section 4a of the *War Weapons Control Act* and section 46 of the *Foreign Trade and Payments Regulation*, a special licence is required for deals by intermediaries regarding the procurement of war weapons or “other military equipment” which are located abroad and are to be delivered to the foreign customer without encountering German territory (arms brokerage).

Question 10

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

Export licences can only be revoked under narrow legal requirements, cf. sections 49 of the Administrative Procedure Act (VwVfG) and 7 of the War Weapon Control Act (KrWaffKontrG). These cases occur very rarely in practice.

Question 11

Penal and administrative implications for any exporter failing to comply with national controls

Violations of foreign trade and payments law provisions are criminal offenses punishable by extended imprisonment, e.g. if they—

- (1) refer to equipment listed in Part I of the Export List, e.g. weapons, ammunition, defence materials, chemicals, (parts of) equipment, etc., or even war weapons (according to section 18 (2) of the *Foreign Trade and Payments Act* or
- (2) infringe the provisions made by economic sanctions adopted by the Security Council of the United Nations or the Council of the EU in the framework of the CSFP (section 17 (1) of the *Foreign Trade and Payments Act*).

Other violations are punishable by fines of up to 500,000 Euro.

As far as administrative implications are concerned, the exporter faces the following consequences:

- (1) Without any changes of the company’s internal organization, no more export licences will be granted.
- (2) The company will be subject to “reliability checks”.
- (3) The company could be asked to replace the “person responsible for exports” (Member of the Board of Directors)
- (4) Violations of law will increase the risk assessment of company’s exports with influence on future customs clearance processes.
- (5) The company’s reliability could decrease and possibly have negative effects on authorizations of simplified procedures or the AEO Certificate or even cause their revocation.

Question 12

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

Concerning war weapons, Section 5 of the *War Weapons Control Act*, stipulates exemptions from the licensing requirement in specific constellations, e.g. in the case of someone acting under the supervision or as an employee of another person.² Furthermore, the licensing requirements do not apply to the German Federal Armed Forces, Federal police, customers' frontier service (according to section 15 (1) *War Weapons Control Act*).

Question 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

Licences for temporary export (e.g. for trade fairs or demonstration purposes) are issued under the condition that the equipment is returned to Germany before the licence expires. If this deadline is not adhered to, a corresponding application for an extension must be submitted in due course.

Customs will verify the return of the goods to Germany on the export licence in question where the export licence entitles the holder for multiple temporary exports. Where an export licence entitles the holder to a single temporary export, proof of reimportation must be provided to the licensing authority only.

Upon request, licences can be issued for several temporary exports, under the condition that the equipment in question is returned to Germany each time.

As a general rule, licences are valid for two years.

Question 14

Licence documents and any standard conditions attached to it

The export licence forms and relevant documents can be found on BAFA's website: https://www.bafa.de/DE/Aussenwirtschaft/Ausfuhrkontrolle/Antragsstellung/antragsstellung_node.html (in German).

Question 15

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

German foreign trade and payments law defines (1) individual licences, (2) collective licences, and (3) general licences.

(1) Individual licences/licences up to a maximum amount

The basic form of the export/shipment license is the individual license. It authorizes the export of one or several items to one recipient based on one application. As a special type of individual licence, a "licence up to a maximum amount" can be issued. This licence permits

² In this case, the principal has to apply for a licence.

the export of equipment for several contracts, *e.g.* in the context of a framework contract with a customer, up to the maximum amount authorized (*e.g.* sales within one year).

(2) *Collective export licences*

Rather than applying for individual licences, it is possible to issue a collective licence to certain reliable exporters, *e.g.* if a high number of export licences were granted in the previous year. This licence permits the export of a group of equipment to several recipients.

(3) *General licences*

There is no need to apply for an individual licence if a General Licence can be used for the export. National General Licences are issued by the Federal Office of Economics and Export Control and are published in the Federal Gazette. The following General export licenses apply for the export of military equipment, namely:

- No. 18 for signature-reducing clothing and equipment
- No. 19 for all-terrain vehicles
- No. 20 for certain brokering activities
- No. 21 for protection equipment
- No. 22 for explosives
- No. 23 for the re-export of conventional arms
- No 24 for temporary exports
- No 25 for certain cases, *e.g.* export of goods in possession of foreign armed forces stationed in the Federal Republic of Germany
- No 26 for armed forces of the Member States of the European Union, Iceland or Norway
- No 27 for certified recipients established in the Member States of the European Union, Iceland or Norway
- No 28 for certain transfers to France in the context of the Franco-German Cooperation

Question 16

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

In addition to the application procedure, the licensability of a planned export business can be examined legally and politically under the instrument of a preliminary inquiry. In case of a positive assessment, the company inquiring will be informed that the necessary export licence will be issued provided no changes of the legal and political situation occur in the meantime.

Frequent use is made of preliminary inquiries in cases of projects of commercial or political significance or where the licencing situation is unclear.

Question 17

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

In 2020, 10.917 applications for export licences of conventional arms have been processed. In comparison with 2019, the number of applications fell by 3%.³; the number of staff engaged in the export licensing procedure in the BAFA and in the ministries remains unchanged.

Question 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 annual report of the Federal Government on German arms exports for 2020 was published in June 2021.

Question 19

Are all guidelines governing conventional arms transfers nationally published?

The *Political Principles Governing the Export of War Weapons and Other Military* as of 26 June 2019 are published on the website of The Federal Ministry of Economic Affairs and Energy (www.bmwi.de).

These principles form the basis on which the Federal Government exerts its political discretion regarding individual cases; the existence/absence of the criteria contained therein decides whether an export license can be issued in an individual case or not.

All legal texts are publicly available at www.gesetze-im-internet.de, and on the websites of the Federal Ministry of Economic Affairs and Energy, www.bmwi.de, and the Federal Office of Economics and Export Control, www.bafa.de.
