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NOTE VERBALE

The Permanent Representation of Belgium to the Organization for Security and Co-operation in Europe presents its compliments to all Permanent Delegations and Missions to the OSCE and to the Conflict Prevention Centre, and has the honor to provide herewith the Belgian report to the Questionnaire on Conventional Arms Transfers for the year 2019.

The Permanent Representation of Belgium to the Organization for Security and Co-operation in Europe avails itself of the opportunity to renew to all Permanent Delegations and Missions to the OSCE and to the Conflict Prevention Centre the assurances of its highest consideration.



Vienna, 26 June 2020

To: All Permanent Delegations and Missions to the OSCE
OSCE Conflict Prevention Centre

OSCE – Conventional Arms Transfers

Questionnaire on Participating States' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology (FSC.DEC/20/95)



Belgian Report for 2020

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

All Belgian actors involved in the international arms trade (producers, merchants, brokers, dealers, etc.) require a general authorization before they can proceed with business. Only holders of such a general authorization can apply for export or transit licenses. All international transactions involving military goods require a license. Transactions within the European Union fall under different rules than transactions outside of the EU. Before a license is issued, an evaluation of the nature of the military goods in question, the country of end-use, the specific end-user and the intended use of these goods is made, together with a risk assessment, in order to better define the foreseeable impact of their delivery. The basic principles of this evaluation and assessment are based on the criteria of Common Position 2008/944/CFSP of the EU: respect for international obligations, human rights and international humanitarian law; taking into account internal and regional tensions, national security interests, behaviour of the buyer country with regard to the international community (such as the stance on terrorism and non-proliferation), risk of diversion, respect for end-use clauses and compatibility with the economic and technological capacity of the recipient country. This EU Common position was updated in September 2019.

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 August 2003, the competence of strategic export control was to a large extent transferred to the 3 federated entities, i.e. regional authorities: the Flemish Region, the Walloon Region and the Brussels Capital Region. The Regions are individually responsible for the control of international arms transactions which are conducted by the economic operators and private persons established in their respective territories. Transactions within the EU are called “transfers” whereas transactions outside the EU are named “import, transit and export”. The Regions have further been given the competence to promulgate their own legislative measures concerning arms trade, within the parameters of the political and juridical acquis of the European Union. The Belgian federal Government is competent for licenses with regard to international transactions involving weapons from the Belgian Defence and Federal Police.

Legislation as of 1/1/2020:

Federal legislation:

- Federal law of 5 August 1991 on the import, export, transit and fight against the illegal trade in weapons, ammunition and equipment intended specifically for military use or law enforcement and the related technology (amended by the law of 26 March 2003).

Link: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1991080568&table_name=wet

- Royal Decree of 8 March 1993 on the import, export, transit and fight against the illegal trade in weapons, ammunition and equipment intended specifically for military use or law enforcement and the related technology.

Link: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1993030834&table_name=loi

Special law of 12 August 2003 with regard to the regionalization of military export control competences.

Link: <https://wallex.wallonie.be/PdfLoader.php?type=doc&linkpdf=2983-2324-1379>

- Law of 8 June 2006 regulating the economic and individual activities with weapons (also called Weapons Act) as amended by the law of 7 January 2018. This law bans the production, stockpiling, selling, transporting and transferring (including export) of certain categories of weapons such as anti-personnel mines, cluster munitions, blinding laser weapons, fire weapons, and munitions and armour containing uranium.

Link: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2006060830&table_name=loi

- Royal Decree of 14 December 2012 modifying the Royal decree of 8 March 1993 in order to implement Directive 2009/43/EC of 6 May 2009.

Link: http://www.ejustice.just.fgov.be/doc/rech_n.htm

Regional legislation:

- Law (of the Flemish Region) of 15 June 2012 concerning the import, export, transit and transfer of defence-related products, other material for military use, law enforcement equipment, civilian firearms, parts and ammunition, in short (Flemish) “Arms Trade Law”, as amended by the law of 30 June 2017.

Link: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2012061505&table_name=loi

- Decree of the Flemish Government of 20 July 2012 implementing the (Flemish) Arms Trade Law of 15 June 2012, in short (Flemish) “Arms Trade Decree”, as amended by the decree of 9 March 2018.

Link: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2012072044&table_name=loi

- Law (of the Walloon Region) on the import, export, transit and transfer of civilian weapons and defence-related products (21 June 2012).

Link: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2012062111&table_name=loi

- Executive order of the Walloon Region of 23 May 2013

Link: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2013052308&table_name=loi

- Executive order of the Walloon Region of 23 May 2013

Link: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2013052307&table_name=loi

- Ordinance of the Brussels Capital Region of 20 June 2013

Link: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&nm=2013031470&table_name=titre

- Executive order of the government of the Brussels capital region of 3 April 2014

Link: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2014040356&table_name=loi

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

Belgium complies with all EU-legislation on the control of the export and transfer of conventional arms

EU legislation	Intra-EU (transfer)	Extra-EU (export)
Civil Fire arms	Directive 1991/477/EC ¹ Directive 2008/51/EC (~UN Firearms protocol) ²	Regulation 258/2012/EC (~UN Firearms protocol) ³
Military goods	Directive 2009/43/EC (= so-called ICT-directive) ⁴	Common Position 2008/944/CFSP ⁵ (+ Common Military List ⁶ & User's Guide ⁷)

Belgium adheres to and/or is a State Party to and/or participating in and/or implementing the following international treaties, agreements and informal groups related with arms control and disarmament:

- The Arms Trade Treaty
- Arms Embargoes of the UN Security Council and the OSCE;
- Restrictive measures of the EU;
- Arms Control Agreements of the OSCE;

¹<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991L0477:en:HTML>

²<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008L0051&from=en>

³<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:094:0001:0015:En:PDF>

⁴<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:146:0001:0036:en:PDF>

⁵<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019D1560>

⁶[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG0312\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG0312(01)&from=EN)

⁷<https://www.consilium.europa.eu/media/40659/st12189-en19.pdf>

- Convention on Cluster Munitions (Oslo Convention);
- Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW) and its protocols (I, II amended; III, IV, V);
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Convention);
- UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (UN Firearms Protocol);
- Hague Code of Conduct against Ballistic Missile Proliferation (HCOG);
- The Missile Technology Control Regime (MTCR);
- UN Program of Action against the illicit trade in Small Arms and Light Weapons;
- Wassenaar Arrangement.

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

Competent Authorities	For Federal licences	For Regional licences		
		Brussels Capital Region	Flemish Region	Walloon Region
Who is the issuing authority?	The Ministry of Economic Affairs ⁸	Cellule licences -Cel Vergunning (Licensing Office) ⁹	Dienst Controle Strategische Goederen ¹⁰	Direction des Licences d'Armes ¹¹ and binding advice by Wallonie- Bruxelles International ¹²
What other authorities are involved	The Ministry of Foreign Affairs gives binding advice ¹³	The Regional Governments are individually responsible for the control of international arms transactions that are conducted by economic operators and private persons established in their respective territories. The Regions and the Ministry of Foreign Affairs can consult each other in accordance with the Cooperation Agreement of 17 July 2007.		
	If deemed necessary the competent authorities can request information from other government departments such as the Ministry of Defence, Military Intelligence or State Security.			
Who verifies compliance?	Customs, Police, Ministry of Justice, Proof House in Liège, Economic Inspection, Regional licensing officers with inspection powers.			

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.

National control lists include:

⁸ <https://economie.fgov.be/fr/themes/politique-commerciale/licences/armement>

⁹ <https://be.brussels/travailler-et-entreprendre/entreprendre-a-bruxelles/permis-licences-autorisations>

¹⁰ <http://www.fdfa.be/csg>

¹¹ http://economie.wallonie.be/Licences_armes/Accueil.html

¹² <http://www.wbi.be/fr/page/control-licences-analyse-politique-etrangere#U8PhzfK0XTo>

¹³ http://diplomatie.belgium.be/en/policy/policy_areas/peace_and_security/disarmament_non_proliferation/

- the EU common military list (containing the aforementioned “defense-related products”; latest version adopted by the Council on 18 February 2019);
- list of dual-use goods as covered by EU Regulation 428/2009 (latest version adopted by the European Commission on 14 December 2018);
- law enforcement equipment;
- “military” catch-all clauses: Flemish Region and Brussels Capital Region: “other material for military use”, namely goods which, alone or in combination with each other or other goods, substances or organisms, can cause severe harm or damage to persons or goods and which can be deployed as a means of violence in an armed conflict or a similar situation of violence.

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)?**

Transfers within the EU are regulated by Directive 2009/43/EC (as updated by Commission Directive 2019/514 of 14 March 2019). Transfers within the Benelux are exempt from the licensing obligations. All other destinations are handled on a case-by-case basis as a function of the nature of goods and country of destination, as well as end-user entity. There is no list of countries of concern; the Flemish Arms Trade Law, however, provides the opportunity to the Government of Flanders to adopt “general restrictive measures”, which entail a decision that for a renewable period not exceeding six months no export or transit to a certain country (or end user) is allowed. Belgium implements all arms embargoes adopted by the EU, the OSCE and the UNSC. As to particular requirements, such as re-exportation clauses, a more flexible approach is applied to member states of the EU, NATO and the Wassenaar Arrangement.

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.

An end-user certificate (EUC) is required to obtain an export license. Signatures on EUC’s in principle have to be legalized and authenticated by the Belgian diplomatic missions to the countries of destination/end-use in order to be valid. Guarantees regarding end-use may be required at all times. Non-re-exportation clauses are compulsory in case of export of sensitive military goods or when manageable concerns arise regarding a) diversion or undesirable re-export, b) the efficiency of the export control system of the country of end-use, or c) its export control policies.

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

For licensing purposes by the regional competent authorities in the sector of conventional arms, transit is defined as the transportation of goods that are exclusively brought into Belgium to be transported through its territory into another country, with the exception of transport between two EU Member States, and whereby the goods are transported in one of the following ways:

- a) they are loaded from one mode of transport to another;
- b) they are unloaded from one mode of transport and are then later reloaded onto the same mode of transport.

The definition in the Flemish Arms Trade Act is different in the sense that it does not include the exception for transport between two EU Member States, nor the requirement for transshipment of the goods. The Flemish Arms Trade Act does differentiate between transit proper and trans-shipment on the level of the licensing obligations. Trans-shipment generally requires a licence, with exemptions for certain non-sensitive destinations, while to transit proper only a type of catch-all control is applied, i.e. a transit only requires a licence if there is a reasonable suspicion that one of the listed “problematic situations” is applicable, among which the prohibitions in article 6 of the Arms Trade Treaty.

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?

As mentioned in our answer to question 1, companies wishing to enter the international arms business need to obtain a general authorization to do so.

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

All legislations concerned (see supra) include clauses on the revocation, temporary or definitive suspension and limitation of a license. Transaction licenses have a validity that is limited in time and can be renewed if necessary. They can be revoked, suspended or limited if:

- conditions for granting the licence are no longer fulfilled;
- developments have occurred, or are occurring, which could have an important effect on the assessment of the application;
- revocation, suspension or limitation is required for reasons of security interests or maintenance of public order and public safety.

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.

All legislations concerned (see supra) include penal clauses for offenders. They provide for both criminal and administrative sanctions. They include imprisonment, penalties and the

temporary prohibition to conduct import, export, transit or transfer activities. Sanctions are proportionate to the nature of the violation. In this respect, violations of international weapon embargoes carry the most severe sanctions.

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

Export licenses are required for export to a destination outside the EU. A transaction within the EU is called a “transfer” and requires a “transfer license”, except for transfers to Luxemburg and The Netherlands.

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.

All legislations concerned (see supra) include modalities for temporary export or transfer.

According to the Flemish Arms Trade Law, licences for temporary export are granted under the condition of return of the goods within the validity period of the license, i.e. three years.

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

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

As required by EU Directive 2009/43, legislation in Belgium provides general, global and individual licenses for transfers within the EU. As far as exports to countries outside of the EU are concerned, the Flemish Arms Trade Law provides individual and “combined” licenses. “Combined” licenses entail that these are granted for more than one consignee within a given country.

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

In the Walloon Region and in the Brussels Capital Region, such advice may be provided by the licensing authority. However there is no formal procedure as for the application for such advice and the exporter is not entitled to follow the proposed approach.

In the Flemish Region, companies may apply for a non-binding initial advice on any transaction and are encouraged to do so before entering into contract negotiations. Companies may also apply for a binding written confirmation that the goods they intend to export are not controlled.

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

The number of permanent licenses for export (extra EU) and transfer (intra EU) of military goods granted by the 4 export control authorities in Belgium is on average between 1.500 and 3.000 licences per year.

All export control authorities together currently employ around 20 Full Time Equivalents.

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.

In accordance with article 8(2) of Common position 2008/944/CFSP Belgium contributes to an annual EU report on arms exports.

Link: http://www.eeas.europa.eu/non-proliferation-and-disarmament/arms-export-control/index_en.htm

With regards to the **Walloon Region**, an additional comprehensive report is submitted on an annual basis to the Parliament. This report includes the following information:

- Number of export licences for military items, including temporary movement and renewals;
- Number of transit licences for military items;
- Number of authorisations delivered for sports and hunting arms and handguns (intra-EU);
- Number of ITT licenses;
- Number of export/transit licenses for dual-use items;
- Number of zero notices for dual-use items.

Link: <https://gouvernement.wallonie.be/home/publications/rapport-armes.html>

With regards to the **Flemish Region**, the Arms Trade Law requires the Flemish Government to submit a report on the export of conventional arms and military material to the Flemish Parliament on an annual and biannual basis. Regarding arms and related technology, the annual report includes the following general information:

- Data concerning the Flemish import, export, transit and transfer;
- Data concerning the granted licensing exemptions;
- Data concerning import, export and transit on the European and global level;
- Modifications to the Flemish arms trade legislation;
- International and European initiatives concerning arms trade, including embargoes.

The annual and biannual reports include the specific data on all granted and refused licenses, license exemptions, and license extensions (the specific data on the use of general and global licenses is only included in the annual report). First, an overview is given of the number and value of granted and refused licenses, license exemptions and license extensions as per country of destination. Second, the following data are specified as per licence, licence exemption or license extensions for each of those countries:

- The category of the goods according to the aforementioned control lists;
- The country of end-use (if different from the country of destination);
- The category of the consignee (military forces, other government body, international organisation, defence-related industry, other industry, dealer, private person);
- The category of the end-user (if different from the consignee);
- Value of the goods;
- If applicable, the criteria on the basis of which the license or extension was refused.

In addition to the data on licenses, the annual and biannual reports also include data on the delivered initial advices and the granted and refused written confirmations mentioned under question 16.

Apart from the annual and biannual reports which are submitted to the Flemish Parliament, a monthly report is published on the website of the competent government service. The monthly report includes the same specific data on the granted and refused licenses and license exemptions and license extensions as the annual and biannual report.

Link: <http://www.fdfa.be/nl/maand-en-jaarverslagen>

For the **Federal level** a biannual report is submitted by the Ministry of Economy to the Federal Parliament. This report includes the following information:

- number of export licences for military items (temporary movements not included)
- number of import licences for military items (temporary movements not included)
- the category of the goods according to the EU Military List
- value of the licence granted
- countries of destination or provenance.

The Government of the **Brussels Capital Region** submits a biannual and a yearly report to the Parliament of the Brussels Capital region. This report includes, *inter alia*, the following information:

- The evolution of the exports;
- A short analysis of the arms trade in Europe and in the World;
- The data related to the imports, exports transit and transfers concerning the Brussels Capital Region;
- Problems encountered, including possible diversion cases in the destination countries;
- The data on granted exemptions
- Possible changes in rules and procedures in the Brussels Capital Region;
- Evolutions in European and international control regimes and embargoes;

Link : http://du-arms.brussels/category/contenu_publication/#cont_1

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

All related Belgian legislation and regulations – federal and regional - are published in the Belgian Official Journal (Belgisch Staatsblad/ Moniteur Belge – site: http://www.ejustice.just.fgov.be/doc/rech_n.htm). Other guidelines can be found on the websites of the respective departments (see supra). European legislation is published on the EU-website.
