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PERMANENT MISSION
OF THE REPUBLIC OF MALTA
TO THE ORGANIZATION FOR SECURITY AND
COOPERATION IN EUROPE

Note No. 64./2019

NOTE VERBALE

The Permanent Mission of the Republic of Malta to the Organization for Security and Co-operation in Europe presents its compliments to the Delegations of Participating States and has the honour to enclose the completed questionnaire on Principles Governing Conventional Arms Transfers for the year 2018 concerning national policies, practices and procedures regarding the export of conventional arms and related technology.

The Permanent Mission of the Republic of Malta to the Organization for Security and Co-operation in Europe avails itself of this opportunity to renew to the Delegations of Participating States and to the Conflict Prevention Centre of the OSCE the assurances of its highest consideration.



Vienna, 14th June, 2019

Director – Conflict Prevention Centre
Delegations of all Participating States
VIENNA



MALTA

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

2018

OSCE participating States are requested to provide details of:

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

The Government of Malta is currently committed to a policy to export arms in accordance with the principles of the common position and also taking into consideration Malta's international obligations in this matter.

2. Their 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.

The export of conventional arms and related technology is governed by the Military Equipment (Export Control) Regulations¹ (Subsidiary Legislation 365.13).

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

Malta is a member of the Wassenaar Arrangement.

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?

Applications for the export of conventional arms and related technology are received by the Trade Services Directorate, Commerce Department within the Ministry for the Economy, Investment and Small Business. Applications must be accompanied by technical specifications and end user certificates. Applications are referred for endorsement by the Ministry of Foreign Affairs, the Armed Forces of Malta and the Police as needed. Export authorizations are issued or denied on the basis of the criteria established by the European Union Code of Conduct on arms export. Arms and weapons intended for export are inspected, sealed and escorted by members of the Police Ballistics Section and

¹ <http://docs.justice.gov.mt/lom/Legislation/English/SubLeg/365/13.pdf>

the Customs officials in order to ensure that the export has actually taken place.

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 national list of conventional arms and weapons, which are subject to export controls, is identical to the Common Military List of the European Union as published in the latest version printed in the EU official journal.

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)?

There is no published list of destinations of concern. However, no licences are issued for the export of conventional arms destined to those countries which are subject to an arms embargo decided by a Common Position or Joint Action adopted by the Council of the European Union, or by a binding resolution of the Security Council of the United Nations, or by a decision on the Organisation for the Security and Co-Operation in Europe. No preferential treatment is given to any country or a group of countries. However, when deciding whether to issue or refuse a licence, consideration is given to the internal situation of the country of destination regarding the existence of tensions or armed conflicts, the respect of human rights, and the attitude towards terrorism and international organized crime.

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.

Applications for export authorizations must be accompanied by an end-user certificate. Where possible, end-user certificates are verified through the use of foreign embassies or through state to state communication carried out by the Ministry for Home Affairs and Trade Promotion. In most cases, export licences are issued with a proviso that the items should not be re-exported, resold or otherwise lent or disposed of without the prior consent of the Maltese Government.

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

The provisions of the national regulations apply also to items in transit, including transshipments. Items in transit are defined as those “items which only pass through the territory of Malta, that is those which are not assigned a customs-approved treatment or use other than the external transit procedure or which are merely placed in a free zone or free warehouse and where no record of them has to be kept in an approved stock record”. Transshipments are defined as those items which are trans-boarded from one vessel or aircraft onto another.

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?

Exporters must apply for an export authorization by filling in a set form, which can include the details of the contract. However, the companies are not obliged to seek official governmental authority prior to negotiating or concluding a contract with foreign customers. In the case of brokering, prior to engaging in any brokering activities relating to the transfer of conventional arms, brokers must be in possession of a licence to act as a broker. Such licences are issued by the Director responsible for trade. The fact that an exporter would have entered into a contract of sale does not mean that this deal will in any way limit the issue of a denial of export should such a case warrant it.

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

The Military Equipment (Export Control) Regulations empower the Director responsible for trade to issue export authorizations for conventional arms and to annul, suspend, modify or revoke an export authorization, which has already been issued.

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.

Any person in Malta, or any citizen or permanent resident of Malta, whether in Malta or elsewhere who contravenes the export control regulations shall be guilty of an offence and shall be liable on conviction to a term of imprisonment not exceeding five years or to a fine not exceeding 116,468.67 Euro.

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

The only exception consists in the export of arms by the Armed Forces of Malta for specific purposes, namely: (i) for use by an International United Nations Force in the course of its duties as such; (ii) for use in connection with EU-led Peace-Keeping Operations sanctioned by UN/OSCE; (iii) for use in connection with distress situations and other cases of an emergency nature; (iv) for the purpose of their being repaired, overhauled, refitted, modified, tested or maintained and returned to Malta; (v) for the purpose of their being used at international military competitions; and (vi) for the purposes of testing of munitions.

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.

The national regulations do not provide for any preferential procedures for temporary exports. These are treated in the same manner as permanent exports.

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

Export authorizations are issued on a form printed on security paper. The format of the authorization conforms to the model set out in Annex III a of the EU Council Regulation 428/2009 (see link to copy)². Authorisations are usually issued with a proviso that the items cannot be re-exported.

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

Only individual licences are issued for the export of conventional arms.

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

No commitments are made with exporters prior to the issue of the actual export authorization.

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

During 2018 Malta had authorized 67 military export authorizations. The staff is composed of 2 full time employees and 3 who work on reduced hours.

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.

Nil

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

Information and guidelines on the export of conventional arms are posted on the website at the following address: <http://www.commerce.gov.mt/>

- NB: Participating States that do not export conventional arms and related technology will so inform all other participating States.

² http://trade.ec.europa.eu/doclib/docs/2009/june/tradoc_143390.pdf