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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 to submit herewith, in accordance with the Decision FSC.DEC/20/95 of the Forum for Security Cooperation, the response of Ukraine to Questionnaire on OSCE Participating States' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology Transfers for the year 2019.

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, 12 August 2020

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

VIENNA

Ukraine's response to the OSCE Questionnaire on Participating States' Policy and/or National Procedures for the Export of Conventional Arms and Related Technology for the year 2019

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 commitments of Ukraine in non-proliferation 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 export controls only to the extent necessary to ensure achievement of their goals;
- harmonization of export control principles and procedures with international standards;

The state export control is implemented by means of:

- identification and classification of goods in accordance with control lists;
- licensing international transfers of goods that are subject to export control and negotiations related to the conclusion of foreign trade agreements (contracts) with the countries of concern;
- customs control of goods intended for international transfers;
- enforcement of penalties for violations of export controls requirements

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), came into force in 2003;

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

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);

Decree of the Cabinet of Ministers of Ukraine of 8 June, 1998 No. 838 "On Approval of the Procedure for Authorization of Business Entities to Conduct

Export and Import of Military Goods and Goods Containing Information Constituting a State Secret” (with amendments);

Decree of the Cabinet of Ministers of Ukraine of 6 June 2012 No. 500 “On Approval of State Export Control over Negotiations Related to 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 to which they are a party to.

Being a Member State of the UN, Ukraine adopts and implements all UN SC resolutions imposing arms embargoes as well as other related restrictive measures with regard to arms transfers.

Ukraine is also a member of all multilateral international export control regimes, including the Wassenaar Arrangement (WA), and when considering an application for an international transfer it also takes into account Initial Elements of the WA and other documents agreed by WA Plenaries.

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 engage 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 agencies could be engaged 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 taking 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 an entity as a subject to international transfers;

- 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 Decree of the Cabinet of Ministers of Ukraine of 20 December, 2003 No. 1807 “On Approval of the Procedure for State Control over International Transfers of Military Goods” (with amendments). It completely corresponds to the Munitions List of the Wassenaar arrangement.

As the WA Plenary Meetings regularly review and amend the WA Munitions List, Ukraine, being a participating state of the Regime, also amends its national list accordingly.

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 guarantees 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 prior approval of a Ukrainian exporter and the SSECU. 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.

Decree of the Cabinet of Ministers of 27 April, 1999 No. 920 “On Approval of the Procedure for Granting Guarantees and State Control over Commitments to Use Goods that are Subject to State Export Control in compliance with Declared Purposes” provides national procedures of the 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 export license application has to be supported by end-user written undertakings concerning the specific end-use of the exported goods, the specific location of the use and that the goods intended for an international transfer won't be retransferred to a different end-user without prior 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 can be left without consideration. They are the following:

- an application for a license is signed by an unauthorized person;
- not all the documents required were submitted or those 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 SSECUCU 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 wishing to enter into negotiations to conclude a contract with foreign customers to export arms are obliged to seek official governmental authority from the SSECUCU.

The procedures of the state export control over negotiations mean:

- receiving a conclusion issued by the SSECUCU allowing contractual negotiations with foreign entities for the transfer of military or dual-use goods and non-listed goods to a destination that is a subject to embargo under international obligations of Ukraine;
- concluding a contract with a foreign economic entity taking into account the recommendations of 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 to the SSECUCU on the outcome of negotiations;
- 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 issuing a license, suspends or revokes a license in the following cases:

- when it's necessary to ensure national interests or comply with international commitments of Ukraine;
- when a business entity has violated the export control requirements;
- when there is a need to perform additional expertise of submitted documents by the SSECUCU;
- suspension of business activity of an entity;
- entity's bankruptcy;
- registration of an entity as a subject of international transfers is cancelled.

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 stipulated in corresponding provisions of the Criminal Code of Ukraine (art. 333), the Administrative Code of Ukraine (art.188 and 212), 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 no circumstances stipulated in the legislation of Ukraine in which 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 fair, 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 under 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 temporary 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 under which the temporary export of goods is conducted;
- a secrecy degree certificate for goods intended for temporary export.

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

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

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

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

Permits and conclusions can be, as follows:

- single permit/conclusion is a permit or conclusion, which is given to a registered entity to conduct negotiations or implement 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 is 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 is 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.

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

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

Information about license procedures is regularly posted 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 total number of export licenses and conclusions issued in 2019 is 2196 (for international transfers both of arms and dual-use items).

SSECU comprises of 68 persons in its staff. Other Governmental Departments (including MoD, MFA, etc.) are also involved in the export licencing process, but there are no centrally held estimate for the total number of people involved.

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, SSECU regularly submits reports on export/import of conventional arms to the UN, OSCE, Wassenaar Arrangement. Moreover, the above-mentioned information is submitted to the Verkhovna Rada (Parliament) of Ukraine and is also available on the web-site of the SSECU at www.dsecu.gov.ua.

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

All guidelines governing conventional arms transfers are officially published on the web-site of the SSECU at:

www.dsecu.gov.ua.

They also can be found on the web-site of the main legislative institution of Ukraine - Verkhovna Rada, at:

www.rada.gov.ua