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Note 33/2018-OSCE

The Permanent Mission of Switzerland to the Organization for Security and Co-operation in Europe (OSCE), the United Nations and to the International Organizations in Vienna presents its compliments to all Permanent Missions/Delegations of Participating States to the OSCE Forum for Security Co-operation in Vienna and to the Secretariat of the Conflict Prevention Centre and has the honour, with reference to the FSC.DEC/10/02, FSC.DEC/8/98, FSC.DEC/13/97 and FSC.DEC/20/95, to enclose the following information:

Response of Switzerland to the Questionnaire on Participating States Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology, as of 30 June 2018. Switzerland does not provide a physical version of the information exchange on "conventional arms transfers" and "military holdings" for calendar year 2017 since related information is available electronically on the following website:
<http://www.unroca.org/switzerland/report/2017/>.

The Permanent Mission of Switzerland to the Organization for Security and Co-operation in Europe (OSCE), the United Nations and the International Organizations in Vienna avails itself of this opportunity to renew to all other Permanent Mission/Delegations of Participating States to the OSCE Forum for Security Co-operation in Vienna and to the Secretariat of the Conflict Prevention Centre the assurance of its highest consideration.

Vienna, 29 May 2018



To all Permanent Missions/Delegations to the OSCE FSC
To the Secretariat of the Conflict Prevention Centre
V i e n n a



Switzerland

OSCE Questionnaire on Practices and Procedures for the Export of CAT (FSC.DEC/20/95)

30 June 2018

Information related to conventional arms transfers (imports and exports) and the military holdings for the reporting year 2017 can be found on <https://www.unroca.org/switzerland/report/2017/>.

The export control of war material is – with one exception – subject to the Federal Act on War Material (WMA) and the corresponding Ordinance on War Material (WMO). Non-commercial exports of firearms, their components and accessories, and their ammunition and munitions components destined to Schengen member states fall within the scope of the Federal Act on Weapons, Weapons Accessories and Ammunition (Weapons Act, WA).

The following responses refer to the regulations of the legislation on war material unless noted otherwise.

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

According to article 22 WMA the manufacture, brokerage, export and transit of war material for recipients abroad shall be authorized if this is not contrary to international law, international obligations, and the principles of Swiss foreign policy.

Article 5 WMO states the licensing criteria for export control:

¹ *In the granting of a license for export trade and for contracts under article 20 WMA, the following criteria are taken into account:*

- a. *the maintenance of peace, international security and regional stability;*
- b. *the situation in the country of destination, in particular with regard to respect for human rights and the non-use of child soldiers;*
- c. *the efforts made by Switzerland in the area of development cooperation, and in particular the possibility that the country of destination is listed as one of the least developed countries on the current OECD-DAC list of countries in receipt of development;*
- d. *the conduct of the country of destination towards the international community, in particular with regard to compliance with international law;*
- e. *the attitude of the countries which are participating with Switzerland in international export control regimes.*

² *Licenses shall not be granted for export trade and for contracts under article 20 WMA if:*

- a. *the country of destination is involved in an internal or international armed conflict;*
- b. *the country of destination violates human rights in a systematic and serious manner;*
- c. *[empty]*
- d. *in the country of destination there is a high risk that the exported weapons will be used against the civilian population; or*

- e. *in the country of destination there is a high risk that the exported weapons will be passed on to an undesirable end recipient.*

³ *In derogation from paragraphs 1 and 2, a license may be granted for individual weapons in Category 1 of Annex 1 with the ammunition pertaining thereto, provided the weapons are used exclusively for private or sporting purposes.*

⁴ *In derogation from paragraph 2 letter b, a license may be granted if there is a low risk that the exported war material will be used to commit serious violations of human rights.*

The granting of a license for the export of finished products or for individual parts or assembly packages to a foreign government or a company acting on behalf of a foreign government requires a non-re-export declaration from the government of the country of destination. The requirement for a non-re-export declaration is waived if the case involves individual parts or assembly packages of negligible value.

By issuing the non-re-export declaration as part of the End-User Certificate (EUC), the country of destination confirms not to re-export, sell, lease out, let, lend, or donate the items, whether in whole or in part, to any third party abroad without the prior written consent of the Swiss Confederation.

If there is an increased risk in the country of destination that the war material to be exported could be passed on to an undesirable end-recipient, the licensing authority may stipulate that it has the right to verify compliance with the non-re-export declaration on the territory of the recipient country (Post-Shipment Verification). In the case of export of substantial volumes, a non-re-export declaration in the form of a diplomatic note from the country of destination is required.

In the case of small arms and light weapons, SALW (including their ammunition and hand grenades), the licensing authority usually requests the end-user to confirm in the EUC that the SALW will not be used against the civilian population in an offensive manner.

If there is evidence that the non-re-export declaration has been violated, the licensing authority may take precautionary measures. It may also revoke licenses already issued.

A non-re-export declaration may be waived in the case of individual parts or assembly packages of war material if it is established that, once abroad, they will be integrated into a product and not re-exported unmodified, or in the case of anonymous components, that their value in comparison with the finished war material is negligible.

If the end-user is neither a state entity nor a company acting on behalf of a foreign government, the exporter has to demonstrate that either an import license has been issued by the country of final destination or that no such license is required.

2. National legislation governing the export of conventional arms and related technology

The national legislation encompasses:

- Federal Act on War Material (War Material Act, WMA, SR 514.51) and the corresponding War Material Ordinance (WMO, SR 514.511);
- Federal Act on the Implementation of International Sanctions (Embargo Act, EmbA, SR 946.231) and corresponding ordinances;
- Federal Act on Weapons, Accessories and Ammunition (Weapons Act, WA, SR 514.54) and the corresponding Ordinance on Weapons, Accessories and Ammunition (Weapons Ordinance, WO, SR 514.541).

3. International agreements or guidelines, other than OSCE commitments, covering the export of conventional arms to which Switzerland is a party

Switzerland participates in the United Nations Register of Conventional Arms. The first reply to the Register has been submitted in 1993 for the year 1992. Since then, Switzerland submits its replies to the Register on an annual basis.

Switzerland may enact compulsory measures in order to implement sanctions (i.e. ordered by the UN, the OSCE or by Switzerland's most significant trading partners) which serve to secure compliance with international law, and in particular the respect of human rights. The granting of licenses is not permitted if such enforcement measures in terms of the Federal Act on the Implementation of International Sanctions (Embargo Act) have been ordered.

Furthermore, Switzerland participates in the Wassenaar Arrangement, which has been established in order to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations. Switzerland is also a State Party to the Arms Trade Treaty, which aims at establishing the highest possible common international standards for regulating the international trade in conventional arms as well as preventing and eradicating the illicit trade in conventional arms including preventing their diversion.

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

The State Secretariat for Economic Affairs (SECO) decides on export licenses in agreement with the responsible offices of the Federal Department of Foreign Affairs. Additional consultations are conducted with the responsible offices of the Federal Department of Defense, Civil Protection and Sport in the case of security policy or procurement policy matters; the Federal Intelligence Service in the case of significant licensing proceedings (these can include export licenses for significant quantities, specific types of goods and/or to particular recipients). If deemed significant to foreign policy and/or security policy, export requests must be submitted to the Federal Council (the Swiss Government) for a decision (art. 29 para. 2 WMA). If the offices involved are unable to agree on a license application, the application is also submitted to the Federal Council for a decision. In cases of minor significance or where there are precedents for the decision, the offices involved may waive the requirement for a joint decision and authorize the SECO to take a decision without consultation (art. 14 WMO).

Controls at the border are in the responsibility of the Federal Customs Administration within the Federal Department of Finance (art. 19 WMO). The Central Office for Combating the Illegal Trade in War Material within the Federal Department of Defense, Civil Protection and Sport participates in enforcement and in the prevention of offences and shall report violations of the provisions of the WMA to the competent prosecution authorities. The Office of the Attorney General is responsible for legal prosecutions.

5. Lists of conventional weaponry under national export controls and the basis for their control

Article 5 WMA defines war material.

¹ *The following are deemed to be war material:*

- a. *Weapons, weapons systems, munitions and military explosives;*
- b. *Equipment that has been specifically conceived or modified for use in combat or for the conduct of combat and which is not as a general rule used for civilian purposes.*

² *War material also includes individual components and assembly packages, which may also be partially processed, provided it is discernable that such components cannot be used in the same form for civilian purposes.*

The Federal Council has listed the goods considered as war material in annex 1 to the WMO. Categorization of war material is based on the Munitions List (ML) of the Wassenaar Arrangement.

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

An export license will usually only be granted if a declaration is provided stating that the material will not be re-exported (non-re-export declaration as part of the End-User Certificate (EUC)).

Switzerland does not publish a list of destinations of concern.

The individual sanctions ordinances adopted by the Federal Council stipulate the specific measures and prohibitions in place against certain countries, certain individuals, groups or entities. All sanctions ordinances and changes to them are published in the Official Corpus of Federal Law which is available online and in hardcopy.

Annex 2 to the WMO lists 25 countries that (like Switzerland) are committed to stringent export controls, that take part in international export control regimes (namely: Australia Group, Missile Technology Control Regime, Nuclear Suppliers Group, Wassenaar Arrangement) and that are compliant with all export requirements listed in art. 5 WMO.

No specific license is required for the brokering of or the trade in war material involving these countries; however, dealers and professional brokers require an initial license. Furthermore, no specific license is required in order to enter into contracts relating to the transfer of intellectual property, including know-how, related to war material, or the granting of rights thereto provided such property or rights are intended for states that are listed in annex 2. Moreover, holders of initial licenses as well as transport and haulage undertakings with a domicile or permanent establishment in Switzerland may apply for a general transit license (GTL) for the transit of war material to countries of final destination that are listed in annex 2.

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

Before the granting of an authorization the respective non-re-export declaration as part of the End-User Certificate (EUC) will be assessed in a formal manner. If there is evidence that the non-re-export declaration has been violated, the licensing authority may take precautionary measures (e.g. temporary stop of delivery, request for information, on-site inspections). Licenses can be reassessed and may be suspended or revoked (art. 19 WMA). The verification of information in EUCs is not regulated by law but subject to an internal directive on this matter. Switzerland requests confirmations stating that the material arrived at the intended destination on a case-by-case basis or makes use of its right to conduct Post-Shipment Verification (PSV) (see above).

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

The transit of war material is regulated under the legislation on war material in a similar manner to export. WMA stipulates that transit is subject to authorization in the same way as exports are and also under the same conditions. The authorization criteria are identical to those which apply to decisions on exports. Exceptions to the normal procedures include persons travelling by air carrying firearms for their personal use (provided such goods do not leave the transit area of the airport) and security agents accompanying official visits. In these cases no transit license is required.

9. Procedures governing companies wishing to export arms

Anyone who wishes to manufacture war material on Swiss territory or wishes to trade or broker war material on a professional basis requires an initial license. The initial license is granted to natural or legal persons if the applicant offers the required guarantee for the proper conduct of the business affairs and if the intended activity is not contrary to national interest.

No initial license is required by those who outside of Switzerland manufacture, trade in, or act as a professional broker for firearms under the legislation on weapons, their components or accessories or their munitions or munitions components and who therefore hold a license to trade arms under the legislation on weapons.

The initial license is non-assignable and applies only to the war material mentioned therein. It may be of limited duration and subject to conditions and requirements. It may be revoked completely or in part if the requirements for its grant are no longer fulfilled.

For the export of war material a specific license is required.

Companies are – with one exception (a license is required in order to enter into a contract for the transfer of intellectual property including know-how that is essential for the manufacture or the use of war material from Switzerland to a natural person or legal entity with domicile or registered office abroad. The same applies to entering into a contract that grants rights to such intellectual property and know-how) – not obliged to obtain official authorization already before contract negotiations begin or before a contract is signed. However, in these cases the companies act on their own risk. They have the possibility to ask the licensing authority in advance if a possible export – under the present circumstances – could be approved (likelihood of approval).

10. Policy on the revocation of export licenses once they have been approved

In accordance with WMA, if exceptional circumstances require, a license may be suspended or revoked.

Additionally, as stipulated in art. 4 WMO an initial license to manufacture war material shall be withdrawn if it has not been used for five years. Initial license for the trade or brokerage of war material shall be withdrawn if it has not been used for three years.

If an initial license is withdrawn, revoked or has lapsed for any other reason, the war material that is still in the possession of the license holder shall be sold or recycled under the supervision of the licensing authority.

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

Violations of the WMA will be prosecuted according to article 33 WMA. Criminal sanctions provided are custodial sentences or monetary penalties. In serious cases, the penalty is a custodial sentence of at least one year but not exceeding ten years, which may be combined with a monetary penalty.

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

In accordance with WMA, the authorization requirements for the export of war material consist of an initial license for general access to this activity and a specific license for each individual case.

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

For war material that is temporarily exported for repair, for an exhibition, to be used in a performance or for valuation, the export license is also valid for its re-import. The exporter is obliged to re-import the exported items. These re-imports have to be confirmed with respective customs declarations.

14. License documents and any standard conditions attached to it

Documents related to the licensing procedure have been provided with the update 1998. With effect from 1 October 2014 an electronic licensing system (ELIC) was introduced which replaced the pre-existing paper-based licensing processes. All license documents are now only handled electronically (<http://www.elic.admin.ch>).

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

The export of war material under WMA requires, in addition to an initial license, a specific export license.

With respect to the activities that require a license in terms of the WMA, a distinction is made between the following specific licenses: brokerage license; import license; export license; transit license;

license to enter into agreements relating to the transfer of intellectual property, including know-how or the granting of rights thereto; trading license.

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

⇒ See also paragraph 9 in this document.

A potential exporter may inquire advice from the licensing authority. A preliminary inquiry will be answered in writing. Although the answer of the licensing authority is not legally binding with regard to a future decision on a possible official application, the answer remains normally the same.

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

Between 2'000 and 3'000 export licenses are issued per year (2017: 2'378). Eight full-time employees are employed in the export licensing procedure.

18. 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 Federal Council reports annually to the Control Committees of the Federal Parliament on the details relating to the export of war material.

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

The pertinent laws are issued in three official languages (German, French and Italian) – some texts additionally in English – and are available online at <https://www.admin.ch/gov/fr/accueil/droit-federal/recueil-systematique.html>. The public is kept informed on amendments to the laws, ordinances and regulations at various points in time, for example, when the Federal Council adopts the text of a law, ordinance or regulation, after Parliament has considered amendments, and by the time amendments enter into force.
