



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 of the OSCE and has the honour to submit herewith the information on conventional arms transfers and the response of Ukraine to the Questionnaire on the conventional arms transfers for the year 2021.

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 of the OSCE the assurances of its highest consideration.

Enclosure: as stated, on 13 pages



Vienna, 8 July 2022

All Permanent Missions and Delegations to the OSCE
Conflict Prevention Centre
Vienna

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

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 obligations of Ukraine in nonproliferation and export control sphere;
- establishing the state export control over international transfers of military and dual use goods; taking measures to prevent the misuse of the above-mentioned goods for illegal purposes;
- law based governance;
- application of the export control only within necessary and sufficient scope;
- export control procedures and principles harmonization with international standards;
- cooperation with international organizations and foreign countries in the state export control sphere to promote international security and stability, in particular to prevent proliferation of WMD and its delivery systems.

The state export control is implemented by means of:

- identification/classification of goods against control lists;
- licensing international transfers of goods that are subject of export control or negotiations related to conclusion of foreign trade agreements (contracts) for the export of goods to the countries of concern;
- customs control and customs clearance of goods intended for international transfers;
- enforcement of penalties for export control violations.

The State Service of Export Control of Ukraine, directly or jointly with other central executive authorities:

- facilitates the implementation of activities related to the international transfer of goods when it aligns with national interests; or
- restricts or prohibits such activity if it is contrary to Ukraine's national interests and international commitments, aim to combat terrorism in cases where there is reason to believe that goods relate to WMD, are intended to create WMD or means of its delivery, or appropriate end-use guarantees for the goods that are absent.

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.

Law of Ukraine “On the state control over international transfers of military and dual-use goods” (with amendments);

Law of Ukraine “On Foreign Economic Activity” - Article 20 (with amendments);

Law of Ukraine “On Sanctions” (with amendments);

Decree of the President of Ukraine of 27 June 2007 No. 180/2007 “On the Interdepartmental Commission on Military-Technical Cooperation and Export Control” (with amendments);

Decree of the President of Ukraine of 24 December 2002 No. 1207/2002 “On Additional Measures to Improve Control in the Field of International Military-Technical Cooperation” (with amendments);

Decree of the President of Ukraine of 15 July 1999 No. 861/99 “On the Order of Establishment (Cancellation) of Restrictions on the Export of Goods in Accordance with the International Obligations of Ukraine” (with amendments);

Decree of the President of Ukraine of 25 December 2003 No. 1488/2003 “On Measures to Streamline the Activities of International Air Transportation of Military and Dual-Use Goods”;

Decree of the Cabinet of Ministers of Ukraine of 20 December, 2003 No. 1807 “On Approval of Order of 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 of 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 Regarding the Conclusion of Foreign Trade Agreements (Contracts) for the Export of Goods” (with amendments);

Decree of the Cabinet of Ministers of Ukraine of 15 July 1997 No. 767 “On Approval of the Procedure of the Examination in the Field of State Export Control” (with amendments);

Decree of the Cabinet of Ministers of Ukraine of 27 May 1999 No. 920 “On Approval of the Procedure for Granting Guarantees of State Control of the Commitment to Use of the Stated Purposes of Goods Subject to Government Export Control” (with amendments);

Order of the Cabinet of Ministers of Ukraine of 20 November 2003 No. 690-p “On Improving the Mechanism of Control over International Transportation of Military and Dual-Use Goods” (with amendments);

Decree of the Cabinet of Ministers of Ukraine of 12 July 1999 No. 1228 “On the Business Entities Empowered to Implement Export and Import of Military Goods and Goods Containing Information that Constitutes State Secrets” (with amendments);

Decree of the Cabinet of Ministers of Ukraine of 9 October 1996 No. 1247 “Issues of State Company for Export and Import of Military and Special Products and Services” (Ukrspesexport) – paragraph 2 (with amendments);

Order of the Ministry of Economic Development and Trade of Ukraine of 27.01.2014 No. 74 “On Approval of Regulations of Materials on Administrative Violations in State Export Control”;

Order of the Ministry of Economic Development and Trade of Ukraine of 16.12.2013 No. 1490 “On Approval of the Infringement Proceedings for Legal Entities of Legislation in State Export Control”;

Order of the State Service of Export Control of Ukraine of 09.01.2004 No. 5 “On Approval of the Instruction for Filling out Applications to Obtain Permits, Guarantee Documents, and Other Documents Provided by the State Service for Export Control” (with amendments);

Order of the State Service of Export Control of Ukraine of 29.11.2004 No. 355 “On Approval of the Instruction for the Design and Use of Permits in State Export Control” (with amendments);

Order of the State Service of Export Control of Ukraine of 05.10.2009 No. 86 “On Approval of the Opinion on the Possibility of Negotiations, Report Forms, and the Timing of Reporting”;

Order of the State Service of Export Control of Ukraine of 08.07.2005 No. 193 “On Approval of the Instruction for Filling out the Application for Obtaining (Continued Validity of) Authority to Conduct the Export and Import of Military Goods and Goods Containing Information that Constitutes a State Secret”;

Order of the State Service of Export Control of Ukraine of 27.04.2009 No. 31 “On Approval of Regulations for Registration with the State Service for Export Control of Entrepreneurs as Subjects of International Transfers of Goods”;

Order of the Ministry of Finance of Ukraine of 30.05.2012 No. 649 “On the Approval of the Procedure for Use by the Customs Authorities of Permits and Conclusions of the State Service for Export Control and Their Electronic Copies”.

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

Ukraine is a member-state of the UN, the OSCE and a party to the international export control regime the Wassenaar Arrangement. It's export control legislation is based on the guidelines and principles of these international organizations governing the control over transfers of conventional arms.

Ukraine is a signatory state of the Arms Trade Treaty.

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?**

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.

If there is a need to verify an end-user or intermediary, obtain information on possible diversion from the stated end-use or in the case of an application to an embargoed destination country, at the stage of interagency coordination the SSECU will provide different agencies with necessary information and documentation in writing. The agencies will review the application and then make a recommendation to the SSECU.

The SSECU communicates with the Ministry of Defense, the Ministry of Foreign Affairs, the Ministry of Economy, Military Intelligence Service, the State Security Service and the State Customs Service on matters that fall within their competence.

The highest level of review is reserved for applications that deal with critical national security issues, suspicious activity, or an export to an embargoed destined country. The Interdepartmental Commission on Export Controls and Military-Technical Cooperation, which is subordinate to the National Security and Defense Council of Ukraine, which consists mainly of the heads of relevant agencies and ministries, makes recommendations to the SSECU on such cases. The Interdepartmental Commission identifies the list of countries that require review in the framework of interagency coordination and by the Commission.

When making 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 of business entities at the SSECU as subjects of international transfers of goods;

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.

The national List of military goods is approved by the Decree of the Cabinet of Ministers of Ukraine of 20 December, 2003 No. 1807 “On Approval of Order of State Control over International Transfers of Military Goods” (with amendments). It corresponds to the Munitions List of the Wassenaar Arrangement.

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)?

When considering documents submitted for a license for international transfers of goods that are subject to export control specific attention is given to a guarantee 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 approval of a Ukrainian exporter. 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) or/and in special terms and conditions of a license.

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.

The Decree of the Cabinet of Ministers of 27 April, 1999 No. 920 “Procedures for control over the use of goods subject to the state export control for stated purposes” provides national procedures of state control concerning verification of the end-use of exported goods according to declared purposes.

Negotiations related to the conclusion of foreign trade agreements (contracts) for export of military, dual use and non-listed goods to embargoed countries established by Ukraine based on its international obligations require a licence. The List of such countries is published on the web site of the SSECU.

In addition the Interdepartmental Commission on Export Controls and Military-Technical Cooperation identified the list of countries (not open)

that require review in the framework of interagency coordination and by the Commission.

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 end-user certificate is a document that contains a guarantee of the specific end-use of the exported goods, the specific location of the use and also a guarantee that they won’t be retransferred to a different end-user without approval of a Ukrainian exporter and the SSECU.

An end-user certificate is signed and stamped (if applicable) by the head of an organization.

The SSECU may include a post-audit requirement in the license that would allow Ukrainian competent state agencies and foreign law enforcement officials to conduct an on-site post-shipment verification (PSV) at the end-user’s facilities. Furthermore, it is required to submit reports on the use of the issued license by license holder.

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 is left without consideration. They are the following:

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

The procedures of the state export control over negotiations mean:

receiving a conclusion issued by the SSECU allowing for the contractual negotiations with foreign entities concerning the transfer of military or dual-use goods and non-listed goods to a destination subject to embargo under international obligations of Ukraine;

concluding a contract with a foreign economic entity taking into account the recommendations indicated in the 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 on the outcome of negotiations to the SSECU;

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 in issuing the license, suspends or revokes a license in the following cases:

the necessity to ensure national interests or comply with international obligations of Ukraine;

when business entity has violated legislation in particular in export control sphere;

the need to perform additional expertise of submitted documents by the SSECU;

suspension of business activity of an entity;

entity’s bankruptcy;

registration of an entity is canceled.

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 presented in related articles of the Criminal Code of Ukraine (art. 333), the Administrative Code of Ukraine (art. 188¹⁷ and 212⁴), 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 cases in the legislation of Ukraine when a transfer of conventional arms does not require a license except for:

cases indicated in decontrolled notes in the WA Munitions List implemented into national legislation;

international transfers of gas, sporting or hunting weapons, weapons loaded with nonlethal rubber bullets or similar in properties projectiles, other weapons covered with licensing system on circulation of such weapons (in country), components, bullets and ammunition therefor.

13. License for temporary export (e.g. demonstrations or testing), the period allowed and any special conditions attached to the licence, 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 fairs, 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 in accordance with 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 temporarily 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 in accordance with which the temporary export of goods is conducted;

a secrecy degree certificate for goods intended for temporarily export.

In special conditions of a license (conclusion) the SSECU indicates the requirement to return goods without any changes in quantity and quality.

In Ukrainian legislation the period goods allowed to be in the country of destination is not specified.

14. License documents and any standard conditions attached to it.

The specific forms of license documents (permit and conclusion) are provided in the SSECU's Order of 29.11.2004 No. 355 "On Approval of the Instruction for the Design and Use of Permits in State Export Control" approved by the Ministry of Justice of Ukraine (published on the web site of the SSECU).

The standard conditions includes requirements to submit 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") as follows:

- permit - a document issued by the SSECU, which grants the right to export or import goods;

- conclusion - a document issued by the SSECU, which grants the right for temporary import or export of goods or their transit, the holding of negotiations related to the conclusion of foreign trade agreements (contracts) on export of military, dual-use or non-listed goods to states for which a partial embargo has been established for the supply of such goods.

Permits and conclusions can be single, general or open:

- single permit/conclusion - a permit or conclusion, which is given to a registered entity to conduct negotiations or the implementation of 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-user;

- general permit/conclusion - 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 - 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.

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

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

Information about license procedures is regularly updated 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 number of export licenses issued in 2020: 940.

The staff of the SSECU engaged in the export licensing procedure: 79 people.

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 the SSECU regularly submits reports on export/import of conventional arms to the UN, OSCE and the Secretariat of the Wassenaar Arrangement. Also Ukraine reports to the UN and OSCE export/import of small arms and light weapons.

Besides, abovementioned information is submitted to the Verkhovna Rada (Parliament) of Ukraine and is placed on the web-site of the SSECU (www.dsecu.gov.ua).

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

All guidelines governing conventional arms transfers are nationally published in Ukraine.