

Federal Law on War Material of 13 December 1996

The Federal assembly of the Swiss Confederation,

given articles 41, 2nd and 3rd paragraphs, and 64 bis of the Constitution;
given the competency of the Confederation with respect to foreign affairs;
given the message of the Federal Council of 15 February 1995,

decrees:

Chapter 1: General Provisions

Article 1 Aim

The present law has as its aim the respect of international obligations and of Swiss principles regarding foreign policy, by the control of the manufacture and transfer of war material and related technology, while permitting the maintenance in Switzerland of an industrial capacity adapted to defense requirements.

Article 2 Principle

The following are subject to authorisation from the Confederation:

- a. the manufacture of war material;
- b. the trade of war material;
- c. the brokerage of war material;
- d. the import, export, and transit of war material;
- e. the transfer of incorporeal property, including know-how, and the concession of related rights, insofar as they regard war material and they are intended for persons, physical or legal, domiciled or having their headquarters abroad.

Article 3 Relation to other legislations

The present legislation operates without prejudice to:

- a. the Federal and Cantonal legislation on arms;
- b. the prescriptions of customs legislation, the prescriptions on payment traffic, as well as other legislative acts on foreign trade.

Article 4 Armament companies of the Confederation

The provisions regarding initial authorisations (art. 9 to 11) and authorisations to manufacture (art. 13 and 14) are not applicable to armament companies of the Confederation. The provisions regarding brokerage (art. 15 and 16), import and export (art. 17 to 19), as well as the transfer of incorporeal property or the concession of related rights (art. 20 and 21) are not applicable to armament companies when their operations relate to the acquisition of war material for the Swiss Army.

Article 5 Definition of war material

1. "War material," for the purposes of the present law, is to be understood as including:
 - a. weapons, weapon systems, munitions and military explosives;
 - b. equipment specifically conceived or modified for an engagement in combat or for the conduct of combat, which in principle are not used for civil purposes.

2. "War material" is also understood as including spare parts and assembly parts, even partially manufactured, when it is recognisable that they cannot be used in the same execution for civil purposes.
3. The Federal Council designates the war material in an ordinance.

Article 6 Other definitions

1. "Manufacture", for the purposes of the present law, is to be understood as meaning any professional activity consisting in the production of war material or the modification of the parts essential to its functioning.
2. "Trade", for the purposes of the present law, is to be understood as any professional activity consisting of the offering, the acquiring, or the transferring of war material.
3. "Brokerage", for the purpose of the present law, is to be understood as:
 - a. the creation of essential conditions for the conclusion of a contract which has as its object the manufacture, the offer, the acquisition, or the transfer of war material, or, moreover, the transfer of incorporeal property, including know-how, or the concession of related rights, insofar as they concern war material;
 - b. the conclusion of such contracts when the service is supplied by third parties.

Chapter 2: Prohibition of Certain Weapons

Article 7 Atomic, biological, and chemical weapons

1. It is forbidden to:
 - a. develop, manufacture, procure as an intermediary, acquire, hand over to anyone, import, export, transit, or store atomic, biological, or chemical weapons (ABC weapons) or to dispose of them in any other way;
 - b. incite anyone to commit an act mentioned in subparagraph a.;
 - c. facilitate the commission of an act mentioned in subparagraph a.
2. Do not fall under the scope of this prohibition, acts that are intended to:
 - a. enable the competent agencies to destroy ABC weapons, or
 - b. ensure the protection against the effects of ABC weapons or combat these effects.
3. The prohibition applies also to acts committed abroad, notwithstanding the law applicable in the place of commission, if:
 - a. these acts violate agreements of international law to which Switzerland is a party, and
 - b. the author is Swiss or domiciled in Switzerland.

Article 8 Antipersonnel landmines

1. It is prohibited to develop, manufacture, procure as an intermediary, acquire, hand over to anyone, import, export, transit, or store antipersonnel landmines, or to dispose of them in any other way.
2. Do not fall under the scope of this prohibition, acts that are intended to:
 - a. enable the competent agencies to destroy antipersonnel landmines, or
 - b. to assure the protection against the effect of antipersonnel landmines or combat these effects.
3. The term "antipersonnel landmine" is understood as meaning any explosive device placed under or on the ground, or another surface, or in proximity, and especially conceived or modified so as to explode as a result of the presence, the proximity, or the contact of a person, and intended to put out of combat, injure or kill one or more persons.

Chapter 3: Initial Authorisations

Article 9 Object

1. Must be a holder of an initial authorisation, any person who, on Swiss territory, intends to:
 - a. manufacture war material;
 - b. trade in war material, for his own account, or for another's, or to broker, in a professional capacity, for foreign recipients, regardless of the location of the said material.
2. No initial authorisation is required for the execution of orders of the Confederation bearing on war material intended for the Swiss Army.

Article 10 Conditions

1. Initial authorisations are granted to persons, physical or legal, who:
 - a. offer the necessary guaranties of a regular conduct of their business, and
 - b. whose foreseen activity is not contrary to the interests of the country.
2. If, in order to undertake his activity, the applicant must also hold an authorisation required by the Federal or Cantonal legislation on arms, the initial authorisation will not be delivered unless the first authorisation has been granted.

Article 11 Scope

1. Initial authorisations are untransferable and are valid only for the war material that they mention. They can be limited in time and subject to charges and conditions.
2. They can be revoked, partially or completely, if the conditions of grant are no longer fulfilled.
3. They do not replace authorisations required by other provisions of Federal or Cantonal law.

Chapter 4: Specific Authorisations

Section 1: Types of Authorisation

Article 12

For the activities subject to the authorisation regime under the present law, the following authorisations are distinguished:

- a. the authorisation to manufacture;
- b. the authorisation to broker;
- c. the authorisation to import;
- d. the authorisation to export;
- e. the authorisation to transit;
- f. the authorisation to transfer incorporeal property, including know-how, or the concession of related rights.

Section 2: Authorisation to Manufacture

Article 13 Object

1. Any person who wishes to manufacture war material on the Swiss territory must, in addition to the initial authorisation, be a holder of an authorisation to manufacture for each specific case.
2. Sub-contractors do not require an authorisation to manufacture.
3. No specific authorisation for manufacturing is required for the filling of orders of the Confederation bearing on war material intended for the Swiss Army.

Article 14 Scope

1. The authorisation to manufacture can be of a limited period and subject to charges and conditions.
2. If the authorisation to manufacture is required for war material intended to be exported, the conditions applicable to the granting of an export authorisation (art. 22) must be fulfilled.
3. Once the authorisation to manufacture for war material intended for export has been granted, the authorisation to export the said material will not be refused unless exceptional circumstances require it.

Section 3: Authorisation to Broker

Article 15 Object

1. Any person who, on Swiss territory, wishes to procure as an intermediary war material for recipients abroad, without possessing his own place of production of war material in Switzerland, is required to hold an initial authorisation under the terms of article 9 and, for each particular case, a specific authorisation.
2. The Federal Council can provide for exceptions with regard to certain countries.

Article 16 Scope

1. The authorisation to broker can be of a limited period and subject to charges and conditions.
2. If exceptional circumstances require it, the authorisation to broker can be suspended or revoked.

Section 4: Authorisation to Import, Export, and Transit

Article 17 Scope

1. The import, export, and transit of war material are subject to an authorisation from the Confederation.
2. An authorisation to transit is required for deliveries to a Swiss customs warehouse, and for deliveries from such a warehouse abroad.
3. The Federal Council regulates the authorisation regime and the procedure regarding transit of war material in air space.
4. No authorisation is required for:
 - a. the non-commercial import of shoulder and fist firearms by individuals and their corresponding munitions;
 - b. the import of war material intended for the Confederation.

Article 18 Declaration of non-reexport; exceptions

1. As a general rule, an export authorisation cannot be granted unless the delivery is to a foreign government, or to a company working for such a government, and that the foreign government has declared that the material will not be reexported (non-reexport declaration).
2. It is possible to forgo the non-reexport declaration for spare parts or assembly parts of war materials when it is established that, once abroad, they will be integrated into a product, and will not be reexported as such, or in the case of anonymous parts of negligible value in relation to the finished war material.

Article 19 Scope

1. Authorisation to import, export, and transit are of a limited time period.
2. If required by exceptional circumstances, they can be suspended or revoked.

Section 5: Authorisation to Transfer Incorporeal Property or the Concession of Related Rights

Article 20 Object

1. The conclusion of a contract, the object of which is the transfer of incorporeal property, including know-how, essential to the development, manufacture, or exploitation of war material, is subject to authorisation, if it is foreseen that the said transfer will take place from Switzerland to a person, physical or legal, domiciled or headquartered abroad. The conclusion of a contract, the object of which is the concession of related rights to such incorporeal property and know-how, is also subject to authorisation.
2. Is not subject to authorisation incorporeal property, including know-how:
 - a. required for works relating to the installation, up-keep, control, and repair of war material, when such works are of routine nature and that the export of war material has been authorised;
 - b. that has fallen in the public domain;
 - c. that must be divulged in the context of a request for a patent in another state, or
 - d. which is used for the purposes of basic scientific research.
3. The Federal Council can provide for exceptions with regard to certain countries.

Article 21 Conditions

The authorisation will not be granted if the acquirer is domiciled or headquartered in a country towards which the export of war material in question is not authorised.

Section 6: Conditions for Authorisations for Business Abroad

Article 22 Manufacture, brokerage, export, and transit

The manufacture, brokerage, export, and transit of war material for recipients abroad are authorised if these activities do not contravene international law, and are not contrary to Switzerland's foreign policy principles and its international obligations.

Article 23 Delivery of spare parts

The export of spare parts intended for war material whose export has been authorised is also authorised, unless exceptional circumstances arise that would justify the revocation of the first authorisations.

Article 24 Import

The import of war material is authorised if it does not contravene international law and is not contrary to the country's interests.

Section 7: Embargo

Article 25

In order to take into account decisions taken by the international community, the Federal Council can decide that no authorisation will be granted for a specific country or for a group of countries.

Chapter 5: Controls, Procedure, Fees

Article 26 Controls

The Federal Council issues provisions regarding the control of the manufacture, the trade, the brokerage, the import, the export, and the transit of war material, as well as the control of transfers of incorporeal property, including know-how, and the concession of related rights, when these regard war material.

Article 27 Obligation to inform

The holder of an authorisation under the present law, as well as the proprietors and employees of the affected companies, are obligated to supply control agencies with all information necessary to ensure a control in due form, and to present them with all the necessary documents.

Article 28 Prerogatives of the control agencies

1. The control agencies have the right to enter the commercial premises of the persons subject to the obligation to inform, as well as to visit them during normal working hours without prior notice; they also have the right to inquire into useful documents. They can sequester potential evidence. In case of suspicion of illicit acts, more stringent provisions of procedural and case law are reserved.
2. In order to ensure their control, they may, in case of need, ask for the assistance of the Cantonal or Communal police agencies, investigation agencies from the customs administration, and the Federal police.
3. They are empowered, within the limits of the objectives of the present law, to use personal information. With respect to sensitive information, only information regarding proceeding or penal or administrative sanctions may be used. The use of other sensitive information is authorised only when it is indispensable to the settlement of a case.
4. They are bound by professional secrecy and must, in their domain, take all necessary precautions to avoid economic espionage.

Article 29 Competency and procedure

1. The Federal Council designates the competent agencies and establishes procedural rules. Border control is the responsibility of customs agencies.
2. The Federal Council pronounces itself on applications whose importance with regard to foreign policy or security policy is considerable. Moreover, the procedure is governed by Federal administrative procedural law.
3. The procedure applicable to appeals submitted against decisions taken under the present law is governed by general provisions on the Law on Administrative Procedure.

Article 30 Central office

1. The Federal Council designates a central office tasked with repressing illicit activities relating to war material.
2. The central Office participates in the execution of the present law, as well as in the prevention of infractions, and carries out police inquiries. It has the right to use personal information, including sensitive information and personality profiles, insofar and as long as the work requires it.

Article 31 Fees

The authorisations provided for in the present law are subject to fees. The Federal Council establishes the amount.

Article 32 Information to Parliament

The Federal Council informs the Management Commissions of the Federal Chambers regarding the details of war material exports.

Chapter 6: Penal Provisions

Article 33 Infractions to the authorisation regime and obligatory declarations

1. Will be liable for imprisonment, or to a fine of up to one million francs, any person who intentionally:
 - a. without being the holder of an authorisation, or in violation of the conditions or charges contained in an authorisation, manufactures, imports, transits, exports, trades, or brokers war material, or concludes contracts regarding the transfer of incorporeal property relative to war material, including know-how, or on the concession of related rights;
 - b. supplies false or incomplete information in an application, while such information is essential to the granting of an authorisation, or makes use of such an application by a third party;
 - c. does not indicate or indicates in an incorrect fashion the war material to be imported, exported or transited;
 - d. delivers, transfers or procures as an intermediary war material to a recipient or to a destination other than the one indicated on the authorisation;
 - e. transfers incorporeal property, including know-how, or concedes related rights to a recipient or destination other than the one indicated on the authorisation;
 - f. participates in financial operations linked to the illicit trafficking of war material or serves as an intermediary in the financing of such an undertaking.
2. In serious cases, imprisonment shall be of ten years at the most. This sentence can carry an additional fine of up to 5 million francs.
3. If the author acted negligently, the sentence shall be a term of imprisonment of up to six months, or a fine of up to 100'000 francs.
4. In cases of non-authorized import or transit, the infraction committed abroad is equally punishable.

Article 34 Infractions to the prohibition on nuclear, biological, and chemical weapons

1. Will be punished to a confinement for up to ten years at the most or imprisonment any person who, intentionally and without being able to invoke one of the exceptions mentioned in article 7, paragraph 2:
 - a. develops, manufactures, procures as an intermediary, acquires, hands over to anyone, imports, exports, transits, stores atomic, biological or chemical weapons (ABC weapons), or disposes of them in any other way,
 - b. incites anyone to commit an act mentioned at subparagraph a., or facilitates the accomplishment of an act mentioned at subparagraph a.
 - c. facilitates the accomplishment of an act mentioned at subparagraph a.
2. The confinement or imprisonment can be accompanied by a fine of up to five million francs.
3. If the author commits the acts out of negligence, the penalty will be of imprisonment of twelve months at the most or a fine of up to 500'000 francs.
4. Any act committed abroad is punishable, notwithstanding the applicable law of the place of commission:
 - a. if it violates international law agreements to which Switzerland is a party, and

b. its author is Swiss or domiciled in Switzerland.

Article 35 Infractions to the prohibition on landmines

1. Will be punished with confinement of up to ten years or imprisonment, any persons who, intentionally, and without being able to invoke one of the exceptions mentioned at article 7a, 2nd paragraph:

- a. develops, manufactures, procures as an intermediary, acquires, hands over to anyone, imports, exports, transits, stores landmines, or disposes of them in another manner,
- b. incites anyone to commit one of the acts mentioned at subparagraph a.; or
- c. facilitates the accomplishment of an act mentioned at subparagraph a.

2. The confinement or imprisonment can be accompanied by a fine of up to five million francs.

3. If the author commits the act out of negligence, the penalty will be of imprisonment of up to twelve months, or a fine of up to 500'000.

Article 36 Contraventions

1. Will be punished with detention or a fine of 100'000 francs at the most, any person who, intentionally:

- a. refuses to supply information, documents, or access to commercial premises mentioned in articles 27 and 28, 1st paragraph, or gives false information on that subject;
- b. contravenes in another way the present law, one of its executory provisions whose violation is declared to be punishable, or a decision based on the penal provisions of the present article, without the act being punishable by virtue of another provision.

2. Attempt and complicity are punishable.

3. If the author commits the act out of negligence, the penalty shall be a fine of 40'000 francs at the most.

4. Penal proceedings are prescribed at five years. This delay can be prolonged by a maximum of half if the prescription is interrupted.

Article 37 Infractions committed in businesses

Article 6 of the law regarding penal administrative law is applicable to infractions committed in businesses.

Article 38 Confiscation of war material

Irrespective of the fact that a person is punishable or not, the judge shall order the confiscation of the relevant war material if there is no guaranty that it will not be used in the future in a fashion consonant with the law. The confiscated war material, as well as the possible proceedings of its sale are conferred to the Confederation.

Article 39 Confiscation of patrimonial commodities

Confiscated patrimonial commodities and compensatory credits are conferred to the Confederation.

Article 40 Jurisdiction and obligation to denounce

1. Proceedings and the judgement of infractions are of Federal penal jurisdiction.

2. The agencies of the Confederation and the Cantons tasked with the granting of authorisations and with control, the police agencies of the Cantons and Communes, as well as customs agencies, are required to denounce infractions to the present law they have

discovered or have knowledge of during the course of their duties to the Public Ministry of the Confederation.

Chapter 7: Administrative Cooperation

Article 41 Administrative cooperation in Switzerland

The competent agencies of the Confederation as well as Cantonal and Communal police agencies can communicate amongst each other and inform the competent supervisory agencies the information necessary for the execution of the present law.

Article 42 Administrative cooperation between Swiss authorities and foreign authorities

1. The competent Federal authorities with regard to the execution, control prevention of offences and penal proceedings can collaborate with competent foreign authorities, as well as with international organisations or bodies, and coordinate their investigation, insofar that:
 - a. the execution of the present law or foreign similar provisions require it, and
 - b. the foreign authorities, international organisations or bodies in question are held to professional secrecy or by an equivalent duty of discretion, and give, in their field, guarantees against economic espionage.
2. They can in particular request from foreign authorities as well as international organisations or bodies the communication of necessary information. To that end, they may supply information regarding:
 - a. the nature, the quantity, the place of destination and use, the use, as well as the recipients of the merchandise, of parts, of incorporeal property, including know-how, or the concession of related rights;
 - b. the persons who participate in the manufacture, the delivery, the brokerage, or the financing of merchandise or parts, the transfer of incorporeal property, including know-how, or concession of related rights;
 - c. the financial modalities of the operation.
3. If the foreign state grants reciprocity, they may communicate the information mentioned at paragraph 2, with or without prior request, if the foreign authorities give the assurance that this information:
 - a. will be used to end consonant with the present law, and
 - b. will not be used in penal proceedings unless it was obtained in conformity with provisions relating to international judicial cooperation.
4. They may also communicate this information to international organisations or bodies, if the conditions mentioned at paragraph 3 are fulfilled, notwithstanding the reciprocity requirement.
5. The provisions relative to international judicial cooperation in penal matters are reserved.

Chapter 8: Final Provisions

Article 43 Execution

1. The Federal Council decrees the executory provisions.
2. The Federal Military Department is tasked with the execution (Added as a footnote by the Ordinance Relating to the Disposition Attributing competency in the Law on War Material of 25 February 1998, "Federal Department of the Economy", for art. 13, para. 1 of the Ordinance, "Federal Department of Justice and Police" for art. 13, para. 2 of the Ordinance).

Article 44 Abrogation of the current law

The Federal Law on War Material of 30 June 1972 is abrogated.

Article 45 Modification of the current law

The Federal Law on Explosive Substances 25 March 1977 is modified as follows:

Art. 9, 1st paragraph

1. Are subject to authorisation from the Confederation, the manufacture in Switzerland of explosive materials, as well as their import, export or transit. The legislation on war material is reserved with respect to military explosive materials. The authorisation to manufacture explosive materials intended for a civil use includes the right to sell them on Swiss territory.

Articles 40, 2nd and 3rd paragraphs

Abrogated

Article 46 Transitory provisions

1. The activities that did not require an authorisation under the previous legislation on war material, and which were the object of a contract before the entry into force of the present law, can be pursued without authorisation for a transitory period of five years. The provisions of the Federal Law on Foreign Economic Measures of 25 June 1982 are reserved.

2. Contracts regarding the transfer of incorporeal property, including know-how, or the concession of relative rights, that were concluded before the entry into force of the present law, do not require an authorisation required by the latter.

Article 47 Referendum and entry into force

1. The present law is subject to an optional referendum.

2. The Federal Council establishes the date of entry into force; it can renounce the entry into force of certain provisions until the entry into force of a Federal legislation on arms.

3. The Federal Council regulates the trade and commerce of firing powder for civilian use until the entry into force of legal provisions to that end.

National Council, 13 December 1996 Council of States, 13 December 1996

President: Stamm Judith President: Delalay

The Secretary: Anliker The Secretary: Lanz

Expiry of the referendum period and entry into force

1. The referendum period prescribed for the present law expired on 24 March 1997 without having been invoked.

2. The present law enters into force on 1 April 1998

25 February 1998

In the name of the Swiss Federal Council

The President of the Confederation, Cotti

The Chancellor of the Confederation, Couchepin