

**FIFTH REVIEW CONFERENCE OF THE STATES PARTIES
TO THE CONVENTION ON THE PROHIBITION OF THE
DEVELOPMENT, PRODUCTION AND STOCKPILING
OF BACTERIOLOGICAL (BIOLOGICAL) AND TOXIN
WEAPONS AND ON THEIR DESTRUCTION**

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FEDERAL REPUBLIC OF GERMANY

Legislation in the Federal Republic of Germany
on the Prohibition of Biological Weapons



Federal Republic of Germany

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LEGISLATION IN THE FEDERAL REPUBLIC OF GERMANY ON THE PROHIBITION OF BIOLOGICAL WEAPONS

Article IV of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction calls upon each State Party to this Convention to take, in accordance with its constitutional processes, any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, within its territory, under its jurisdiction or under its control anywhere. The Fourth Review Conference called upon States Parties to give further information on national implementation.

The Federal Republic of Germany fully meets these requirements within its sphere of jurisdiction by way of very extensive and stringent prohibitions and penal regulations. With its War Weapons Control Act and its Foreign Trade and Payments Act, Germany implemented national legislation to regulate dual-use materials as early as 1961. For the Third Review Conference in 1991 as well as for the Fourth Review Conference in 1996 Germany circulated detailed papers on national legislation implementation.

The key features of Germany's implementation and enforcement are:

A. Prohibition of biological weapons:

- In the ratification act of 21 February 1983 concerning the Biological Weapons Convention of 10 April 1972, Germany refers to all prohibitions of Article I of the Convention.
- This regulation is more strictly implemented by the War Weapons Control Act of 20 April 1961. This Act has been amended several times, most recently on 6 July 1998. According to this Act it is prohibited to develop, produce, acquire or transfer, import, export, transport through Federal territory or trade in biological weapons, or otherwise to exercise actual control over these weapons.
- Furthermore, it is also prohibited to wilfully or recklessly encourage or induce another person to develop, produce, etc. biological weapons. "Encourage" in this context means any supportive action, for example the supply of systems or system components for the production of biological weapons or the provision of know-how. "Induce" means incite. "Recklessness" corresponds in essence to gross negligence.

B. Definition of biological weapons:

- The definition of biological weapons laid down in the War Weapons Control List, an attachment to the War Weapons Control Act, is consistent with the fundamental elements in Article I of the Biological Weapons Convention and the definition in Protocol III on the Control of Armaments of 23 October 1954 as part of the Protocol Modifying and Completing the Brussels Treaty. The War Weapons List, last amended on 26 February 1998, also includes genetically altered micro-organisms and a list of representative pathogens and toxins which are considered as potential biological warfare agents.
- As most pathogens and toxins have a dual-use capability, all "devices, components, appliances, facilities, substances and organisms which serve civilian purposes or scientific, medical or industrial research in the field of pure and applied science" are excluded from the weapon definition by a so-called civil use clause. The same applies to substances and organisms which serve prophylactic, protective or detection purposes.
- Organisms and substances which could be utilized to produce biological weapons but which are excluded from the definition because of their civilian applications require an export licence. An export licence is also required for systems and basic system components which are capable of being used for the reproduction of micro-organisms and viruses or the production of toxins or any means of delivery.

C. Export control regulations:

- Export control regulations are laid down in the Foreign Trade and Payments Act of 28 April 1961, last amended on 26 June 2001, the Foreign Trade and Payments Ordinance of 18 December 1986, last amended on 2 July 2001, and the Export List, an Annex to the Foreign Trade and Payments Ordinance, in the most recent version of 13 September 2000. This list defines micro-organisms, viruses and toxins as well as systems and basic system components which require export licences.
- Regulations given by the European Union setting up a Community regime for the control of exports of dual-use items and technology by the Council are contained in Council Regulation (EC) No 1334/2000 of 22 June 2000 and in the EU Common Export Control List, Annex I to 1334/2000 .

D. Penal legislation:

- The War Weapons Control Act and the aforementioned export control regulations are enforced by penal sanctions. The penal sanctions for breaching the regulations of the War Weapons Control Act as well as the export control law not only cover incidents executed within the territory of the Federal Republic of Germany but extend to any breach of these regulations by a German national outside German territory.

All these legal provisions are enforced by stringent customs and export controls. In 1992 Germany established a specialized national agency, the Federal Export Office (Bundesausfuhramt), by separating the export control division from the Federal Office

of Economics. Its experts are responsible for all issues relating to the sensitive field of export controls. The two agencies were joined together again by law of 21 December 2000 to form the Federal Office of Economics and Export Control (BAFA). The Office can be visited on the Internet at: www.bafa.de

The full text or most relevant parts of all regulations quoted in this paper can be viewed on the Internet:

- War Weapons Control Act (Gesetz über die Kontrolle von Kriegswaffen) as of 6 July 1998: www.bafa.de/ausf/downld_v.htm#kwkg
- War Weapons List (Kriegswaffenliste) as of 26 February 1998: www.bafa.de/ausf/downld_v.htm#kwkg
- Foreign Trade and Payments Act (Aussenwirtschaftsgesetz) as of 26 June 2001: <http://jurcom5.juris.de/bundesrecht/awg/index.html>
- Foreign Trade and Payments Ordinance (Aussenwirtschaftsverordnung) as of 2 July 2001: www.bafa.de/ausf/vorschri/awg_awv/awv_ausz.htm
- Export List (Ausfuhrliste) as of 13 September 2000: www.bafa.de/ausf/vorschri/al/al_inhlt.htm
- EU Dual-use Regulation No. 1334/2000 as of 22 June 2000: www.bafa.de/ausf/downld_v.htm#eg-vo
- EU Common Export Control List, Annex I to EU Dual-use Regulation No. 1334/2000 : www.bafa.de/ausf/vorschri/eg-vo/anwahl.htm
