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## **Federal Act on War Materiel (War Mat Act, WMA)**

of 13 December 1996 (Status as of 1 May 2022)

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*The Federal Assembly of the Swiss Confederation,*

based on the Articles 54 paragraph 1, 107 paragraph 2 and 3 and 123 of the Federal Constitution<sup>1,2</sup> and on the powers of the Confederation in foreign affairs<sup>3,4</sup> and having considered the Federal Council Dispatch dated 15 February 1995<sup>5</sup>,

*decrees:*

### **Chapter 1    General Provisions**

#### **Art. 1            Purpose**

This Act has as its aim the fulfilment of Switzerland's international obligations and the respect of its foreign policy principles by means of controlling the manufacture and transfer of war materiel and related technology, while at the same time maintaining an industrial capacity in Switzerland that it adapted to the requirements of its national defence.

#### **Art. 2            Principles**

The following require authorisation by the Confederation:

- a. the manufacture of war materiel;
- b. the trade in war materiel;
- c. the brokerage of war materiel;
- d. the import, export and transit of war materiel;

AS 1998 794

<sup>1</sup> SR 101

<sup>2</sup> Amended by No I of the FA of 1 Oct. 2021, in force since 1 May 2022 (AS 2022 226; BBl 2021 623).

<sup>3</sup> This description of powers corresponds to Article 54 paragraph 1 of the Federal Constitution of 18 April 1999 (SR 101).

<sup>4</sup> Amended by No I 2 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Materiel, Explosives and Goods Usable for Civilian and Military Purposes, in force since 1 March 2002 (AS 2002 248; BBl 2000 3369).

<sup>5</sup> BBl 1995 II 1027

- e. the transfer of intellectual property, including know-how, and the granting of related rights, provided this relates to war materiel and is intended for private individuals or legal entities that have their domicile or headquarters abroad.

**Art. 3<sup>6</sup>** Relation to other legislation

This Act applies without prejudice to customs legislation, the regulations on payment transactions and other legislation on foreign trade.

**Art. 4** Application to federal armaments companies

The provisions relating to the initial licence (Art. 9–11) do not apply to federal armaments companies.<sup>7</sup> The provisions on brokerage (Art. 15 and 16), import and export (Art. 17–19), and the transfer of intellectual property or the granting of rights thereto (Art. 20 and 21) do not apply to armaments companies, provided that their activities relate to the procurement of war materiel for the Swiss armed forces.

**Art. 5** Definition of war materiel

<sup>1</sup> The following are deemed to be war materiel:

- 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.

<sup>2</sup> War materiel 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.

<sup>3</sup> The Federal Council shall designate what is war materiel in an ordinance.

**Art. 6** Other definitions

<sup>1</sup> «Manufacture» within the meaning of this Act is any professional activity involving the production of war materiel or the modification of parts essential to its function.

<sup>2</sup> «Trade» within the meaning of this Act is any professional activity involving the offer, acquisition or passing on of war materiel.

<sup>6</sup> Amended by No 14 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Materiel, Explosives and Goods Usable for Civilian and Military Purposes, in force since 1 March 2002 (AS **2002** 248; BBl **2000** 3369).

<sup>7</sup> Amended by No 14 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Materiel, Explosives and Goods Usable for Civilian and Military Purposes, in force since 1 March 2002 (AS **2002** 248; BBl **2000** 3369).

<sup>3</sup> «Brokerage» is:

- a. the creation of the essential requirements for the conclusion of contracts relating to the manufacture, offer, acquisition or passing on of war materiel, the transfer of intellectual property, including know-how, or the granting of rights thereto, insofar as they relate to war materiel;
- b. the conclusion of such contracts if this service is provided by third parties.

## Chapter 2 Prohibited War Materiel<sup>8</sup>

### Art. 7 Nuclear, biological and chemical weapons

<sup>1</sup> It is prohibited:

- a. to develop, produce, broker, acquire, transfer to anyone, import, export, carry in transit, or store nuclear, biological or chemical weapons (NBC weapons) or to possess them in any other way;
- b. to incite anyone to carry out an act mentioned in letter a above;
- c. to assist anyone to carry out an act mentioned in letter a above.

<sup>2</sup> The foregoing prohibition does not apply to acts that are intended:

- a. to enable the destruction of NBC weapons by the agencies responsible therefor; or
- b. to provide protection against the effects of NBC weapons or to combat such effects.

<sup>3</sup> The prohibition also applies to acts carried out abroad, irrespective of the law at the place of commission, if:

- a. the acts violate international law agreements to which Switzerland is a party; and
- b. the perpetrator is Swiss or is domiciled in Switzerland.

### Art. 8 Anti-personnel mines<sup>9</sup>

<sup>1</sup> It is prohibited:

- a. to develop, produce, broker, acquire, transfer to anyone, import, export, carry in transit, or store anti-personnel mines or to possess them in any other way;

<sup>8</sup> Amended by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

<sup>9</sup> Term according to No I of the FA of 19 Dec. 2003, in force since 1 June 2004 (AS 2004 2451; BBl 2003 2196 2210). This amendment is taken into account throughout this Act.

- b. to incite any person to carry out an act mentioned in letter a;
- c. to assist in committing an act mentioned in letter a.<sup>10</sup>

<sup>2</sup> For the development of procedures in mine detection, mine clearance, or mine destruction techniques and for training in such procedures, the retention or transfer of a number of anti-personnel mines is permitted. The number of such mines shall not exceed the minimum number absolutely necessary for the above-mentioned purposes.<sup>11</sup>

<sup>3</sup> Anti-personnel mines are explosive devices that are placed under, on, or near the ground or any other surface and which are conceived or modified so as to explode as a result of the presence, approach, or contact of a person, and which are intended to incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person that are equipped with anti-handling devices<sup>12</sup> are not considered anti-personnel mines as a result of being so equipped.<sup>13</sup>

<sup>4</sup> «Anti-handling device» means a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine.<sup>14</sup>

#### **Art. 8a<sup>15</sup>** Cluster munition

<sup>1</sup> It is prohibited:

- a. to develop, produce, broker, acquire, transfer to anyone, import, export, carry in transit, or store cluster munition or to possess the same in any other way;
- b. to incite anyone to carry out an act mentioned in letter a above;
- c. to assist anyone to carry out an act mentioned in letter a above.

<sup>2</sup> Paragraph 1 also applies to explosive bomblets that are specifically intended to be dispersed or released by dispensers affixed to an aircraft.

<sup>3</sup> For the development of procedures for detecting, clearing, or destroying cluster munition and for training in such procedures, the retention or transfer of a quantity of cluster munition is permitted. The quantity of cluster munition retained shall not

<sup>10</sup> Amended by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

<sup>11</sup> Amended by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

<sup>12</sup> Term in accordance with No I of the Federal Act of 19 Dec. 2003, in force since 1 June 2004 (AS 2004 2451; BBl 2003 2196 2210). This amendment is taken into account throughout this Act.

<sup>13</sup> Amended by No I of the FA of 20 March 1998, in force since 1 March 1999 (AS 1999 1155; BBl 1998 679).

<sup>14</sup> Inserted by No I of the FA of 19 Dec. 2003, in force since 1 June 2004 (AS 2004 2451; BBl 2003 2196 2210).

<sup>15</sup> Inserted by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

exceed the minimum quantity absolutely necessary for the above-mentioned purposes.

**Art. 8b<sup>16</sup>** Prohibition of direct financing

<sup>1</sup> The direct financing of the development, manufacture or acquisition of prohibited war materiel is itself prohibited.

<sup>2</sup> Direct financing within the meaning of this Act is the direct granting of credits, loans or gifts or comparable financial advantages in order to pay or advance costs and expenditures that are associated with the development, manufacture or acquisition of prohibited war materiel.

**Art. 8c<sup>17</sup>** Prohibition of indirect financing

<sup>1</sup> The indirect financing of the development, manufacture or acquisition of prohibited war materiel is itself prohibited where the prohibition of direct financing is circumvented thereby.

<sup>2</sup> Indirect financing within the meaning of this Act is:

- a. participation in companies that develop, manufacture or acquire prohibited war materiel;
- b. the acquisition of debt securities or other investment products issued by such companies.

### Chapter 3 Initial Licence

**Art. 9** Subject matter

<sup>1</sup> Anyone who on Swiss territory:

- a. wishes to manufacture war materiel;
- b. wishes to trade in war materiel for his own account or for the account of another, or to broker war materiel on a professional basis for recipients abroad, irrespective of the location of the war materiel

requires an initial licence.

<sup>2</sup> No initial licence is required by those who:

- a. supply as sub-contractors companies in Switzerland that hold an initial licence;
- b. execute orders from the Swiss government in respect of war materiel for the Swiss armed forces;

<sup>16</sup> Inserted by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

<sup>17</sup> Inserted by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

- c.<sup>18</sup> manufacture, trade in, or acts as a professional broker outside Switzerland for firearms under the legislation on weapons, their components or accessories or their munitions or munitions components and who therefore holds a licence to trade arms under the legislation on weapons;
- d. manufactures or trades in Switzerland in explosives, pyrotechnic devices or propellant powder covered by the legislation on explosives and who therefore holds a licence under the legislation on explosives.<sup>19</sup>

#### **Art. 10** Requirements

<sup>1</sup> The initial licence is granted to natural or legal persons if:

- a. the applicant offers the required guarantee for the proper conduct of their business affairs; and
- b. the intended activity is not contrary the national interest.

<sup>2</sup> If the applicant also requires authorisation in terms of the federal or cantonal legislation on weapons for his activities, the initial licence is granted only if authorisation under the legislation on weapons has been granted.

#### **Art. 11** Scope

<sup>1</sup> The initial licence is non-assignable and applies only to the war materiel mentioned therein. It may be of limited duration and subject to conditions and requirements.

<sup>2</sup> It may be revoked completely or in part if the requirements for its grant are no longer fulfilled.

<sup>3</sup> It does not replace authorisations that must be obtained in terms of other regulations under federal or cantonal law.

## **Chapter 4 Specific Licences**

### **Section 1 Forms of Licence**

#### **Art. 12**

In respect of the activities that require a licence in terms of this Act, a distinction is made between the following specific licences:

<sup>18</sup> Amended by Annex No 1 of the FA of 22 June 2007, in force since 12 Dec. 2008 (AS **2008** 5499 5405 Art. 2 let. d; BBl **2006** 2713).

<sup>19</sup> Amended by No 14 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Materiel, Explosives and Goods Usable for Civilian and Military Purposes, in force since 1 March 2002 (AS **2002** 248; BBl **2000** 3369).

- a.<sup>20</sup> ...
- b. brokerage licence;
- c. import licence;
- d. export licence;
- e. transit licence;
- f. licence to enter into agreements relating to the transfer of intellectual property, including know-how, or the granting of rights thereto;
- g.<sup>21</sup> trading licence.

## Section 2 ...

### Art. 13 and 14<sup>22</sup>

## Section 3 Brokerage Licence

### Art. 15 Subject Matter

<sup>1</sup> Anyone who on Swiss territory wishes to broker war materiel for a recipient abroad, without operating his own production plant for the manufacture of war materiel in Switzerland, requires, in addition to an initial licence in terms of Article 9, a specific licence for each individual case.

<sup>2</sup> The Federal Council may provide exceptions for certain countries.

<sup>3</sup> Anyone who acts as a professional broker for a recipient abroad in respect of firearms under the legislation on weapons, their components or accessories, or their munitions or munitions components shall receive a specific licence only if he proves that he holds a corresponding licence to trade arms under the legislation on weapons.<sup>23</sup>

<sup>20</sup> Repealed by No I 2 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Materiel, Explosives and Goods Usable for Civilian and Military Purposes, with effect from 1 March 2002 (AS 2002 248; BBl 2000 3369).

<sup>21</sup> Inserted by No I 2 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Materiel, Explosives and Goods Usable for Civilian and Military Purposes, in force since 1 March 2002 (AS 2002 248; BBl 2000 3369).

<sup>22</sup> Repealed by No I 2 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Materiel, Explosives and Goods Usable for Civilian and Military Purposes, with effect from 1 March 2002 (AS 2002 248; BBl 2000 3369).

<sup>23</sup> Inserted by No I 2 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Materiel, Explosives and Goods Usable for Civilian and Military Purposes (AS 2002 248; BBl 2000 3369). Amended by Annex No 1 of the FA of 22 June 2007, in force since 12 Dec. 2008 (AS 2008 5499 5405 Art. 2 let. d; BBl 2006 2713).

**Art. 16** Scope

<sup>1</sup> A brokerage licence may be limited in duration and subject to conditions and requirements.

<sup>2</sup> If exceptional circumstances so require, a brokerage licence may be suspended or revoked.

**Section 3a<sup>24</sup> Trading Licence****Art. 16a** Subject matter

<sup>1</sup> Anyone who on Swiss territory trades in war materiel with persons abroad, without operating his own production plant for the manufacture of war materiel in Switzerland, requires, in addition to an initial licence in terms of Article 9, a specific licence for each individual case.

<sup>2</sup> The Federal Council may provide exceptions for certain countries.

<sup>3</sup> Anyone who from Swiss territory trades with persons abroad in firearms under the legislation on weapons, their components or accessories, or their munitions or munitions components shall receive a specific licence only if he proves that he holds a corresponding licence to trade arms under the legislation on weapons.<sup>25</sup>

**Art. 16b** Applicability

<sup>1</sup> A trading licence may be limited in duration and subject to conditions and requirements.

<sup>2</sup> If exceptional circumstances so require, a trading licence may be suspended or revoked.

**Section 4 Import, Export and Transit Licences****Art. 17** Subject matter

<sup>1</sup> The import, export and transit of war materiel require a licence from the Confederation.

<sup>2</sup> A transit licence is also required for deliveries to a Swiss free warehouse or customs warehouse or for deliveries from such warehouses abroad.<sup>26</sup>

<sup>24</sup> Inserted by No 12 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Materiel, Explosives and Goods Usable for Civilian and Military Purposes, in force since 1 March 2002 (AS **2002** 248; BBl **2000** 3369).

<sup>25</sup> Amended by Annex No 1 of the FA of 22 June 2007, in force since 12 Dec. 2008 (AS **2008** 5499 5405 Art. 2 let. d; BBl **2006** 2713).

<sup>26</sup> Amended by Annex No 5 of the Customs Act of 18 March 2005, in force since 1 May 2007 (AS **2007** 1411; BBl **2004** 567).



<sup>3</sup> The Federal Council regulates the licensing requirements and the procedure for the transit of war materiel through the airspace.

<sup>3bis</sup> It may provide for a simplified licensing procedure for the export or transit to or from certain countries, or provide for exemptions from licensing.<sup>27</sup>

<sup>3ter</sup> It may provide for a simplified licensing procedure for the import of specific parts, assembly packages or anonymous components.<sup>28</sup>

<sup>4</sup> No import licence under this Act is required by those who:

- a. import war materiel intended for use by the Swiss Confederation;
- b.<sup>29</sup> bring firearms, their components or accessories, or their munitions or munitions components into Swiss territory under the legislation on weapons;
- c. import explosives, pyrotechnic devices or propellant powder.<sup>30</sup>

#### **Art. 18** Non-re-export declarations; Exemptions

<sup>1</sup> As a general rule, an export licence may be granted only if it relates to a delivery to a foreign government or to an undertaking acting on behalf of a foreign government, and if a declaration is provided by that government stating that the materiel will not be re-exported (a non-re-export declaration).

<sup>2</sup> A non-re-export declaration may be waived in the case of individual parts or assembly packages of war materiel 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 materiel is negligible.

#### **Art. 19** Scope

<sup>1</sup> Import, export and transit licences are limited in their duration.

<sup>2</sup> If exceptional circumstances require, they may be suspended or revoked.

<sup>27</sup> Inserted by No I 2 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Materiel, Explosives and Goods Usable for Civilian and Military Purposes (AS 2002 248; BBl 2000 3369). Amended by Art. 3 No 5 of the Federal Decree of 17 Dec. 2004 on the Adoption and Implementation of the Bilateral Agreements between Switzerland and the EU on the Association to Schengen and Dublin, in force since 12 Dec. 2008 (AS 2008 447, 5405 Art. 1 let. d; BBl 2004 5965).

<sup>28</sup> Inserted by No I 2 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Materiel, Explosives and Goods Usable for Civilian and Military Purposes, in force since 1 March 2002 (AS 2002 248; BBl 2000 3369).

<sup>29</sup> Amended by Annex No 1 of the FA of 22 June 2007, in force since 12 Dec. 2008 (AS 2008 5499 5405 Art. 2 let. d; BBl 2006 2713).

<sup>30</sup> Amended by No I 4 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Materiel, Explosives and Goods Usable for Civilian and Military Purposes, in force since 1 March 2002 (AS 2002 248; BBl 2000 3369).

## Section 5 Licence for the Transfer of Intellectual Property or the Granting of Rights thereto

### Art. 20 Subject matter

<sup>1</sup> A licence is required in order to enter into a contract for the transfer from Switzerland to a natural person or legal entity with domicile or registered office abroad of intellectual property including know-how that is essential for the manufacture or the use of war materiel. The same applies to entering into a contract that grants rights to such intellectual property and know-how.

<sup>2</sup> Intellectual property, including know-how, that:

- a. is required for the routine carrying out of installation work, maintenance, inspection and repair of war materiel whose export has been licensed;
- b. is available in the public domain;
- c. that must be disclosed for the purposes of a request for a Patents in another country; or
- d. that is used for the purposes of basic scientific research

is not subject to the foregoing licensing requirement.

<sup>3</sup> The Federal Council may provide for exemptions for certain countries.

### Art. 21 Requirements

A licence is not granted if the recipient has his registered office or domicile in a country to which the export of the relevant war materiel is prohibited.

## Section 6 Licensing Requirements for Export Trade

### Art. 22 Manufacture, brokerage, export and transit

The manufacture, brokerage, export and transit of war materiel for recipients abroad shall be authorised if this is not contrary to international law, international obligations, and the principles of Swiss foreign policy.

### Art. 22a<sup>31</sup> Licensing criteria for the export trade

<sup>1</sup> In assessing an application for an export licence under Article 22 and for entering into contracts under Article 20, the following must be taken into consideration:

- a. maintaining peace, international security and regional stability;

<sup>31</sup> Inserted by No I of the FA of 1 Oct. 2021, in force since 1 May 2022 (AS 2022 226; BBl 2021 623).

- b. the situation within the country of destination; in particular, respect for human rights and the non-use of child soldiers shall be taken into consideration;
- c. Switzerland's efforts in relation to development cooperation; in particular the possibility that the country of destination appears as one of the Least Developed Countries on the up-to-date list of development assistance recipients issued by the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD DAC List)<sup>32</sup>;
- d. the behaviour of the country of destination vis-à-vis the international community, in particular with regard to compliance with international law;
- e. the views of countries that participate with Switzerland in international export control regimes.

<sup>2</sup> Export trade under Article 22 and entering into agreements under Article 20 shall not be authorised if:

- a. the country of destination is involved in an internal or international armed conflict;
- b. the country of destination commits serious and systematic violations of human rights;
- c. there is a high risk that the war material to be exported will be used against the civilian population in the country of destination; or
- d. there is a high risk that the war material to be exported will be passed on to undesirable end recipients in the country of destination.

<sup>3</sup> In derogation from paragraphs 1 and 2, authorisation may be granted for individual handguns and small firearms of any calibre with the related ammunition, provided the weapons are intended to be used exclusively for private or sporting purposes.

<sup>4</sup> In derogation from paragraph 2, authorisation may be granted for export trade for operations that foster peace that are carried out on the basis of a mandate from the United Nations, the Organization for Security and Cooperation in Europe, or a supranational organisation whose objective is to promote peace.

#### **Art. 23**            Supply of replacement parts

The export of replacement parts for war materiel whose export has been authorised shall also be authorised if no exceptional circumstances have arisen in the intervening period that would require the revocation of the original licence.

#### **Art. 24**            Import

The import of war materiel shall be authorised if it is not contrary to international law or national interests.

<sup>32</sup> The OECD DAC List is available at [www.oecd.org](http://www.oecd.org) (text available in French and English only).

## Section 7 Embargo

### Art. 25<sup>33</sup>

The granting of licences is not permitted if enforcement measures in terms of the Embargo Act of 22 March 2002<sup>34</sup> have been ordered.

## Chapter 5 Controls, Procedure, Fees

### Art. 26 Controls

The Federal Council shall issue regulations on the control of the manufacture, trade, brokerage, import, export and transit of war materiel as well as the transfer of intellectual property, including know-how, or the granting of rights thereto, to the extent that these relate to war materiel.

### Art. 27 Obligation to provide information

The holder of a licence under this Act or the proprietor and the staff of the corresponding company are obliged to provide the control authorities with all the information and documents required for appropriate controls to be carried out.

### Art. 28 Powers of the control authorities

<sup>1</sup> The control authorities have the right to enter and inspect the business premises of persons obliged to provide information during normal working hours without prior notice and to examine the relevant documents. They shall confiscate incriminating materiel. In the event of suspicion of an offence, more rigorous provisions of procedural law are reserved.

<sup>2</sup> If necessary, they may in the course of their controls call in cantonal and communal police officers, the investigating authorities of the Federal Office for Customs and Border Security, and the Federal Intelligence Service.<sup>35</sup>

<sup>3</sup> They may process personal data in accordance with the objectives of this Act. Particularly sensitive personal data may be processed only where it relates to administrative or criminal proceedings and sanctions. Additional particularly sensitive personal data may be processed only if this is indispensable for handling the individual case.

<sup>4</sup> They are obliged to preserve professional secrecy and to take all the precautionary measures required in their field to prevent industrial espionage.

<sup>33</sup> Amended by Art. 17 No 1 of the Embargo Act of 22 March 2002, in force since 1 Jan. 2003 (AS 2002 3673; BBl 2001 1433).

<sup>34</sup> SR 946.231

<sup>35</sup> Amended by No I 15 of the O of 12 June 2020 on the Amendment of Legislation as a consequence of the Change in the Name of the Federal Customs Administration as part of its further Development, in force since 1 Jan. 2022 (AS 2020 2743).

**Art. 29** Jurisdiction and procedure

<sup>1</sup> The Federal Council shall designate the responsible agencies and regulate the procedural details. Border controls are the responsibility of the customs authorities.

<sup>2</sup> The Federal Council shall decide on applications that are of substantial importance to foreign or security policy. In addition, the provisions of the Federal Act on Administrative Procedure of 20 December 1968<sup>36</sup> govern the procedure.

<sup>3</sup> The procedure for appeals against orders or rulings made in terms of this Act is governed by the general provisions on federal administrative procedure.

**Art. 30** Central office

<sup>1</sup> The Federal Council shall designate a Central Office for combating illegal activities in connection with war materiel.

<sup>2</sup> The Central Office shall participate in enforcement and in the prevention of offences and shall report violations of the provisions of this Act to the competent prosecution authorities. Insofar as and for as long as its duties require, it is entitled to process personal data, including particularly sensitive personal data and personality profiles.<sup>37</sup>

**Art. 31** Fees

The licences provided for by this Act Fees are subject to fees. The Federal Council stipulates the rates.

**Art. 32** Reporting to Parliament

The Federal Council shall report to the Control Committees of the Federal Parliament on the details relating to the export of war materiel.

**Chapter 6 Criminal Provisions****Art. 33** Offences against licensing and reporting obligations

<sup>1</sup> Any person who wilfully commits any of the following acts is liable to a custodial sentence or a monetary penalty:<sup>38</sup>

- a. the manufacture, import, transit, export, trade in, or brokerage of war materiel, or the conclusion of contracts for the transfer of intellectual property including know-how relating to war materiel, or for the granting of rights

<sup>36</sup> SR 172.021

<sup>37</sup> Amended by No I 6 of the Ordinance of 12 Dec. 2008 on the Amendment of Statutory Provisions due to the Transfer of the Intelligence Section of the Service for Analysis and Prevention to the DDPS, in force since 1 Jan. 2009 (AS 2008 6261).

<sup>38</sup> Amended by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

thereto without the relevant licence or in violation of the conditions or requirements stipulated in a licence;

- b. the provision of incorrect or incomplete information in an application when such information is essential for the granting of a licence or the use of such an application that has been completed by a third party;
- c.<sup>39</sup> the failure to report war materiel for import, export or transit or the making of an incorrect declaration in respect of its import, export or transit;
- d. the delivery, transfer or brokerage of war materiel for a recipient or destination other than that named in the licence;
- e. the transfer of intellectual property, including know-how, relating to war materiel, or the granting of rights thereto to a recipient or destination other than that named in the licence;
- f. the participation in financial dealings relating to an illegal war materiel transaction or the procurement funding for such a transaction as an intermediary.

<sup>2</sup> In serious cases the penalty is a custodial sentence of at least one year but not exceeding ten years. The custodial sentence may be combined with a monetary penalty.<sup>40</sup>

<sup>3</sup> If the act is committed through negligence, a monetary penalty not exceeding 180 daily penalty units may be imposed.<sup>41</sup>

<sup>4</sup> In the case of unauthorised import or transit, an act committed abroad is also a criminal offence.

**Art. 34** Offences against the prohibition of nuclear, biological and chemical weapons

<sup>1</sup> Any person who wilfully commits any of the following acts without being able to claim an exemption under Article 7 Paragraph 2 is liable to a custodial sentence not exceeding ten years or to a monetary penalty:<sup>42</sup>

- a. the development, manufacture, brokerage, acquisition, surrender to another, imports, export, transit, stockpiling, or any other form of possession of nuclear, biological or chemical weapons (NBC weapons);
- b. incitement to commit any of the acts listed under letter a; or
- c. assisting in the commission of an act listed under letter a.

<sup>39</sup> Amended by Annex No 5 of the Customs Act of 18 March 2005, in force since 1 May 2007 (AS 2007 1411; BBl 2004 567).

<sup>40</sup> Amended by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

<sup>41</sup> Amended by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

<sup>42</sup> Amended by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

<sup>2</sup> A custodial sentence may be combined with a monetary penalty.<sup>43</sup>

<sup>3</sup> If the act is committed through negligence, the penalty is a custodial sentence not exceeding one year or a monetary penalty.<sup>44</sup>

<sup>4</sup> An act committed abroad is an offence in terms of these provisions irrespective of the law of the place of commission if:

- a. it violates international law agreements to which Switzerland is a contracting party; and
- b. the offender is Swiss or is domiciled in Switzerland.

<sup>5</sup> Article 7 paragraphs 4 and 5 of the Criminal Code<sup>45</sup> apply.<sup>46</sup>

**Art. 35** Offences against the prohibition of anti-personnel mines

<sup>1</sup> Any person who wilfully commits any of the following acts without being able to claim an exemption under Article 8 paragraph 2 is liable to a custodial sentence not exceeding ten years or to a monetary penalty:<sup>47</sup>

- a. the development, manufacture, brokerage, acquisition, surrender to another, import, export, transit, stockpiling, or any other form of possession of anti-personnel mines;
- b. incitement to commit any of the acts listed under letter a; or
- c. assisting in the commission of an act listed under letter a.

<sup>2</sup> A custodial sentence may be combined with a monetary penalty.<sup>48</sup>

<sup>3</sup> If the act is committed through negligence, the penalty is a custodial sentence not exceeding one year or a monetary penalty.<sup>49</sup>

**Art. 35a**<sup>50</sup> Offence against the prohibition of cluster munition

<sup>1</sup> Any person who wilfully commits any of the following acts without being able to claim an exemption under Article 8a paragraph 3 is liable to a custodial sentence not exceeding ten years or to a monetary penalty:

<sup>43</sup> Amended by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

<sup>44</sup> Amended by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

<sup>45</sup> SR 311.0

<sup>46</sup> Inserted by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

<sup>47</sup> Amended by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

<sup>48</sup> Amended by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

<sup>49</sup> Amended by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

<sup>50</sup> Inserted by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

- a. the development, manufacture, brokerage, acquisition, surrender to another, import, export, transit, stockpiling, or any other form of possession of cluster munition;
- b. incitement to commit any of the acts listed under letter a; or
- c. assisting in the commission of an act listed under letter a.

<sup>2</sup> A custodial sentence may be combined with a monetary penalty.

<sup>3</sup> If the act is committed through negligence, the penalty is a custodial sentence not exceeding one year or a monetary penalty.

**Art. 35b<sup>51</sup>** Offences against the prohibition of financing

<sup>1</sup> Any person who wilfully fails to comply with the prohibition of financing under Articles 8b or 8c without being able to claim an exemption under Article 7 paragraph 2, Article 8 paragraph 2 or Article 8a paragraph 3 is liable to a custodial sentence not exceeding five years or to a monetary penalty.

<sup>2</sup> A custodial sentence may be combined with a monetary penalty.

<sup>3</sup> A person who merely accepts the possibility of an offence against the prohibition of financing under Articles 8b or 8c does not commit an offence.

**Art. 36** Contraventions

<sup>1</sup> Any person who wilfully commits any of the following acts is liable to a fine not exceeding 100,000 francs:<sup>52</sup>

- a. the refusal to provide information, submit documents or permit access to business premises in terms of Articles 27 and 28 paragraph 1 or provides false information in this connection;
- b. the violation in any other way of a provision of this Act or of an implementing regulation, the contravention of which is declared to be an offence, or the failure to comply with an order issued with notice of the applicability of the penalties in terms of this Article, unless the criminal conduct constitutes a different offence.

<sup>2</sup> Attempts and complicity are offences.

<sup>3</sup> If the act is committed through negligence, the penalty is a fine of up to 40 000 francs.

<sup>4</sup> The right to prosecute prescribes after five years.<sup>53</sup>

<sup>51</sup> Inserted by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

<sup>52</sup> Amended by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).

<sup>53</sup> Amended by No I of the FA of 16 March 2012, in force since 1 Feb. 2013 (AS 2013 295; BBl 2011 5905).



**Art. 37** Offences in commercial enterprises

In relation to offences in commercial enterprises, Article 6 of the Federal Act of 22 March 1974<sup>54</sup> on Administrative Criminal Law applies.

**Art. 38**<sup>55</sup> Confiscation of war materiel

The court shall order the confiscation of the war materiel concerned, irrespective of the criminal liability of any person, if and to the extent that no guarantee of its lawful continued use is offered. The confiscated war materiel, together with any proceeds of sale, becomes the property of the Confederation subject to the reservation of the Federal Act of 19 March 2004<sup>56</sup> on the Division of Confiscated Assets.

**Art. 39**<sup>57</sup> Confiscation of assets

Confiscated assets or rights to compensation become the property of the Confederation subject to the reservation of the Federal Act of 19 March 2004<sup>58</sup> on the Division of Confiscated Assets.

**Art. 40** Jurisdiction and duty to report

<sup>1</sup> The prosecution and judgement of offences are subject to federal jurisdiction.

<sup>2</sup> The federal and cantonal licensing and control authorities, the cantonal and communal police and the customs authorities are obliged to report offences against this Act that they detect or which come to their knowledge in the course of their duties to the Office of the Attorney General of Switzerland.

**Chapter 7 Administrative Assistance****Art. 41** Administrative assistance in Switzerland

The responsible federal authorities and the cantonal and communal police may disclose data to each other and to the relevant supervisory authorities insofar as this is required for the enforcement of this Act.

**Art. 42** Administrative assistance between Swiss and foreign authorities

<sup>1</sup> The federal authorities responsible for enforcement and controls, and the prevention or prosecution of offences may cooperate with the responsible foreign authorities as well as with international organisations or agencies and coordinate investigations provided:

<sup>54</sup> SR 313.0

<sup>55</sup> Amended by Annex No 3 of the Federal Act of 19 March 2004 on the Division of Confiscated Assets, in force since 1 Aug. 2004 (AS 2004 3503; BBI 2002 441).

<sup>56</sup> SR 312.4

<sup>57</sup> Amended by Annex No 3 of the Federal Act of 19 March 2004 on the Division of Confiscated Assets, in force since 1 Aug. 2004 (AS 2004 3503; BBI 2002 441).

<sup>58</sup> SR 312.4

- a. this is required for the enforcement of this Act or corresponding foreign regulations; and
- b. the foreign authorities or international organisations or agencies are bound by professional secrecy or corresponding duties of confidentiality and guarantee protection from industrial espionage in their field of activity.

<sup>2</sup> They may in particular request foreign authorities and international organisations or agencies to hand over data required. In order to obtain such data they may disclose data relating to:

- a. the condition, quantity, destination and place of use, purpose and recipient of goods, components, and intellectual property, including know-how, or rights thereto;
- b. persons involved in the manufacture, supply, brokerage or funding of goods or components, or in the transfer of intellectual property, including know-how, or the granting of rights thereto;
- c. financial dealings relating to the transaction.

<sup>3</sup> If the foreign state holds a reciprocal right, the federal authorities may in terms of paragraph 1 disclose the data in terms of paragraph 2 with or without having been requested to do so if the foreign authority provides an assurance that the data:

- a. will be processed only for purposes that fall within the terms of this Act; and
- b. will be used in judicial criminal proceedings only if it has been obtained in accordance with the provisions on international mutual assistance.

<sup>4</sup> They may also disclose the data to international organisations or agencies subject to the requirements of paragraph 3, whereby the requirement of a reciprocal right may be waived.

<sup>5</sup> The provisions on international mutual assistance in criminal matters remain reserved.

## Chapter 8 Final Provisions

### Art. 43 Implementation

<sup>1</sup> The Federal Council shall issue the implementation regulations.

<sup>2</sup> ...<sup>59</sup>

### Art. 44 Repeal of current law

The Federal Act of 30 June 1972<sup>60</sup> on War Materiel is repealed.

<sup>59</sup> Repealed by No I 2 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Materiel, Explosives and Goods Usable for Civilian and Military Purposes, with effect from 1 March 2002 (AS 2002 248; BBl 2000 3369).

<sup>60</sup> [AS 1973 108]

**Art. 45** Amendment of current legislation

...<sup>61</sup>

**Art. 46** Transitional provisions

1 ...<sup>62</sup>

<sup>2</sup> Contracts on the transfer of intellectual property, including know-how, or the granting of rights thereto that were entered into prior to this Act coming into force do not require a licence under this Act.

**Art. 47** Referendum and commencement

<sup>1</sup> This Act is subject to an optional referendum.

<sup>2</sup> The Federal Council shall determine the date on which this Act comes into force; until federal legislation on weapons comes into force, it may refrain from bringing individual provisions into force.

<sup>3</sup> It shall regulate trade in propellant powder that is intended for civilian purposes until related statutory provisions have come into force.

Commencement Date: 1 April 1998<sup>63</sup>

<sup>61</sup> The amendments may be consulted under AS **1998** 794.

<sup>62</sup> Repealed by No II 23 of the Federal Act of 20 March 2008 on the Formal Revision of Federal Legislation, with effect from 1 Aug. 2008 (AS **2008** 3437; BBl **2007** 6121).

<sup>63</sup> FCD of 25 Feb. 1998.

