



**PERMANENT REPRESENTATION OF PORTUGAL
TO THE OSCE**

Nr.22/2021

NOTE VERBALE

The Permanent Representation of Portugal to the Organisation for Security and Co-operation in Europe (OSCE) presents its compliments to the Permanent Missions and Delegations of all OSCE participating States and to the Conflict Prevention Centre, and has the honour to forward herewith the 2020 (referring to 2019) information regarding transfers of conventional arms and the Portuguese response to the Questionnaire on Conventional Arms Transfers, which was delayed due to technical reasons.

The Permanent Representation of Portugal to the Organisation for Security and Co-operation in Europe avails itself of this opportunity to renew to the Permanent Missions and Delegations of all OSCE participating States and to the Conflict Prevention Centre the assurance of its highest consideration.

Vienna, 9 June 2021



To
All Permanent Missions/Delegations to the OSCE
The Conflict Prevention Centre

Questionnaire on Participating States' Policy and/or National Practices and Procedures
for the Export of Conventional Arms and Related Technology.

OSCE participating States are requested to provide details of:

1. According to Portuguese Law, persons or companies willing to engage in the activities of trade of conventional arms and related technology must be authorized by the national licensing authority (the Ministry of Defence). Furthermore, export of conventional arms and related technology must be previously authorised and only companies authorised to engage in the activities of trade and industry of conventional arms and related technology can apply for this authorization. An assessment is made by checking licences against the following criteria: i) respect for the international obligations and commitments of Member States, in particular the sanctions adopted by the UN Security Council or the European Union, agreements on non-proliferation and other subjects, as well as other international obligations; ii) respect for Human Rights in the country of final destination as well as respect of international humanitarian law by that country; iii) internal situation in the country of final destination, as regards the existence of tensions or armed conflicts; iv) preservation of regional peace, security and stability; v) national security of the Member States and of territories whose external relations are the responsibility of Member State, as well as that of friendly and allied countries; vi) behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for International Law; vii) existence of a risk that the military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions, and viii) Compatibility of the exports of the military technology or equipment with the technical and economic capacity of the recipient country, taking into account the desirability that states should meet their legitimate security and defence needs with the least diversion of human and economic resources for armaments. Portuguese Law also states that exports can be denied if believed to be inconsistent with the national interest.

2. Law 49/2009, dated August 5 (For military articles, regulates licensing and registration of companies for the industry and commerce of defence-related products and also brokering activities); Law 37/2011, dated June 22 (For military articles, regulates imports, exports, transit, transshipment, and intra-EU transfers, of defence related products, including end-use control); Law 5/2006, dated February 23, and Law 12/2011, dated April 27 (For dual-use/civilian articles, establishes a comprehensive regime which applies to all categories of small arms and light weapons); Law 42/2006, dated August 25 (Regulates the importing and exporting of small arms for sports and collectors). Decree-law 190/2012 of 26 April and the EU Common Position 2008/944/CFSP also apply.

3. United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (A/CONF.192/15); International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (A/CONF.192/15); European Union Council Common Position 2008/944/EC, dated 8 December, defining common rules governing control of exports of military technologies and equipment, exports of military technologies and equipment; European Union Council Directive 2008/51/CE of 21 May 2008 on Control of the Acquisition and Possession of Weapons; European Union Council Directive

91/477/EEC, dated 18 June; European Union Strategy to combat illicit accumulation and trafficking of SALW and their ammunition, adopted by the European Council on 15-16 December 2005; European Union Council Common Position 2003/468/CFSP on the Control of Arms Brokering; European Union Joint Action 2002/589/CFSP On EU Contribution to Combating the Destabilizing Accumulation and Spread of Small Arms; Regulation on Deactivation Firearms (EU) 2015/2403; Directive (EU) 2017/853 of the European Parliament and of the Council of 17 May 2017 amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons; Wassenaar Arrangement Elements, Guidelines, Best Practices and Decisions; Missile Technology Control Regime. Portugal already complies with the relevant dispositions of the Arms Trade Treaty, the ratification instrument was deposited in the 25th September 2015.

4. The licence issuing authorities are the Portuguese Ministry of Defence (MOD) for defence-related products, and the Public Security Police for firearms for civilian use. The licence issuing authorities deny an export application regarding conventional arms and related technology, based on a binding opinion by the Ministry of Foreign Affairs (MFA) on the effects of the requested export from the standpoint of foreign policy and the criteria set in the Common Position 2008/944/CFSP. The Customs authority checks throughout the export formalities if the transfer of conventional arms and related technology is duly authorized. Compliance is enforced by authorization issuing authorities, who control and supervise the activities of companies and individuals engaged in the transfer of conventional arms and related technology.

5. The Common Military List of the European Union.

6. Lists of countries, persons and entities subject to embargoes from the UNSC or restrictive measures imposed by the EU, published namely in the Official Journal of the European Union. Exports to a number of countries can take place under general licences. In addition, there is no list on destinations of concern.

7. There are requirements for the provision of an end-user certificate in an export licence application, which must state non-re-export clauses. The verification of the end-user certificate and of non-re-export is made on a case-by-case basis, with the assistance of the MFA.

8. “The passage through Portugal of goods and military technologies which have another country as declared destination”. The national regulations for the transit and transshipment are the Law 49/2009, dated August 5 and the Law 37/2011, dated June 22. The transit and transshipment must be authorized by the MOD.

9. Yes. Companies are obliged to obtain a governmental legal opinion and an export authorization in the mentioned circumstances.

10. Export licences can be revoked by the issuing authority after being approved, for protection of the national interest, when the authorization was obtained using false or incomplete statements, or when the situation which led to the issuing of the authorization substantially changed. Such cases are governed by Law 37/2011, dated June 22.

11. The criminal and administrative implications for any exporter failing to comply with the national control system are established by Law 37/2011, dated June 22, Law

49/2009, dated August 5, Law 12/2011, dated February 16, and also by the Portuguese Criminal Code, and the General Rules of Administrative Offences and Fines.

12. The export of arms requires an export licence in all circumstances.

13. Licences for temporary exports of conventional arms for maintenance, repair and overhaul purposes are granted for a limited number of countries under a General Licence. In the rest of situations licences for temporary exports of conventional arms are issued on a case by case basis. In both cases, these operations are closely monitored.

14. Copies of the licences issued must be provided and duly signed by the customs authorities and subsequently controlled by the issuing authorities.

15. Portuguese Law foresees general licences, global licences, and individual licences. General licences are used for a predetermined number of countries and products, mainly for temporary purposes, but also for definitive export of related technology, not including conventional arms. Global licences allow for an operator to apply for an export authorization regarding a predetermined conventional weapon, group of weapons or related technology, for a predetermined end-user or group of end-users. Individual licences allow for an operator to apply for an export authorization concerned with a predetermined conventional weapon, group of weapons or related technology, for a predetermined end-user and a predetermined quantity and value.

16. Exporters are advised to perform a risk analysis based on the eight criteria of the European Union Council Common Position 2008/944/CFSP, before they apply for an export authorization. Prior to the licence application, the licencing Authority and the MFA can also provide general information upon request. In addition, the licencing authority, in cooperation with other Ministries involved in the licensing procedure, promotes regular outreach to industry.

17. The average number of export licences issued annually for defence-related products is 750, and the number of staff engaged in the licensing procedure is around ten persons.

18. Portugal has signed the Arms Trade Treaty on June 3^d 2013 and has deposited the instrument of ratification on the 25th September 2015.

Furthermore, Portugal is part of several conventions which prohibit the development, production and stockpiling and transfer of biological weapons, chemical weapons, cluster munitions, anti-personal mines and limit or prohibit the use of certain conventional weapons. Portugal fully complies with the transparency and confidence building measures set forth in those conventions.

Moreover, the EU publishes an annual report on the export of military technology and equipment. The MOD also publishes an annual report on exports, imports and brokering of military goods and technology.

19. Yes, by Law 49/2009, dated August 5; Law 37/2011, dated June 22, Decree 290/2011, dated November 4; Decree 190/2012, dated April 26, and the European Council Position 2008/944/CFSP.