

2. parts, devices, assemblies or substances especially designed for any weapon described in item 1 above.

Moreover, for the definition of nuclear weapons, sentence 2 of the introduction and section I (c) of Annex II of Protocol No. III to the revised Brussels Treaty of October 23, 1954 shall apply.

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Part Four Special Provisions on Biological and Chemical Weapons as well as on Anti-Personnel Mines

Section 18. Prohibition of Biological and Chemical Weapons

It is forbidden to–

1. develop, produce or trade in biological or chemical weapons, to acquire them from or transfer them to another person, to import or export them, to transport them through or otherwise bring them into or out of federal territory, or otherwise to exercise actual control over them;
 - 1a. induce another person to commit an act specified in item 1 above; or
 2. encourage an act specified in item 1 above.

Section 18a. Prohibition of Anti-Personnel Mines

(1) It is forbidden to–

1. use, develop, produce or trade in anti-personnel mines, to acquire them from or transfer them to another person, to import or export them, to transport them through or otherwise bring them into or out of federal territory, or otherwise to exercise actual control over them, in particular to convey, stockpile or retain them;
2. induce another person to commit an act specified in item 1 above; or
3. encourage an act specified in item 1 above.

(2) The definition of anti-personnel mines in Article 2 of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of December 3, 1997 shall apply.

(3) Paragraph (1) shall not apply to acts permitted under the provisions of the Convention referred to in paragraph (2) above.

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Part Five Penal and Administrative Fine Provisions

Section 19. Penal Provisions on Nuclear Weapons

(1) A prison sentence between one and five years shall be imposed on anyone who–

1. develops, produces or trades in nuclear weapons as defined in section 17(2) of this Act, acquires them from or transfers them to another person, imports or exports them, transports them through or otherwise brings them into or out of federal territory, or otherwise exercises actual control over them; or
 - 1a. induces another person to commit an act specified in item 1 above; or
 2. encourages an act specified in item 1 above.

(2) A prison sentence of not less than two years shall be imposed on anyone who—

1. commits an act specified in paragraph (1) above, for gain or as a member of a gang that has been formed for continually committing such criminal offences, with the assistance of another member of the gang; or
2. by committing an act specified in paragraph (1) above
 - a) endangers the security of the Federal Republic of Germany;
 - b) endangers peaceful relations among nations; or
 - c) considerably endangers the foreign relations of the Federal Republic of Germany.

(3) In less serious cases—

1. of the kind specified in paragraph (1) above, the sentence shall be up to three years' imprisonment or a fine;
2. of the kind specified in paragraph (2) above, the sentence shall be between three months and five years' imprisonment.

(4) If the offender acts with negligence in the cases specified in paragraph (1), item 1, above or with gross negligence in the cases specified in paragraph (1), items 1a or 2, above, the sentence shall be up to two years' imprisonment or a fine.

(5) Anyone who—

1. in the cases specified in paragraph (2), item 2, above causes the danger with negligence, or
2. acts with negligence in the cases specified in paragraph (2), item 2, in conjunction with paragraph (1), item 1, above or with gross negligence in the cases specified in paragraph (2), item 2, in conjunction with paragraph (1), items 1a or 2, above and causes the danger with negligence,

shall be punished with a prison sentence of up to three years or with a fine.

(6) Paragraphs (1) through (5) above shall not apply to acts which are suitable and intended for—

1. the destruction of nuclear weapons by the competent authorities; or
2. providing protection against the effects of nuclear weapons or warding off these effects.

Section 20. Penal Provisions on Biological and Chemical Weapons

(1) A prison sentence of not less than two years shall be imposed on anyone who—

1. develops, produces or trades in biological or chemical weapons, acquires them from or transfers them to another person, imports or exports them, transports them through or otherwise brings them into or out of federal territory, or otherwise exercises actual control over them; or
- 1a. induces another person to commit an act specified in item 1 above; or
2. encourages an act specified in item 1 above.

(2) In less serious cases of the kind specified in paragraph (1) above, the sentence shall be between three months' and five years' imprisonment.

(3) If the offender acts with negligence in the cases specified in paragraph (1), item 1, above or with gross negligence in the cases specified in paragraph (1), items 1a or 2, above, the sentence shall be up to three years' imprisonment or a fine.

(4) Paragraphs (1) through (3) above shall not apply to acts which are suitable and intended for—

1. the destruction of chemical weapons by the competent authorities; or

2. providing protection against the effects of biological or chemical weapons or warding off these effects.

Section 20a. Penal Provisions on Anti-Personnel Mines

(1) A prison sentence between one and five years shall be imposed on anyone who,—

1. contrary to section 18a above, uses, develops, produces or trades in anti-personnel mines, acquires them from or transfers them to another person, imports or exports them, transports them through or otherwise brings them into or out of federal territory, or otherwise exercises actual control over them, in particular, conveys, stockpiles or retains them;
2. induces another person to commit an act specified in item 1 above; or
3. encourages an act specified in item 1 above.

(2) In particularly serious cases the prison sentence shall be not less than one year. A particularly serious case is generally deemed to exist if—

1. the offender commits an act specified in paragraph (1) above for gain; or
2. the act specified in paragraph (1) above involves a large number of anti-personnel mines.

(3) In less serious cases of the kind specified in paragraph (1) above the sentence shall be between three months' and three years' imprisonment.

(4) If the offender acts with negligence in the cases specified in paragraph (1), item 1, above or with gross negligence in the cases specified in paragraph (1), items 2 or 3, above the sentence shall be up to three years' imprisonment or a fine.

Section 21. Acts Committed outside the Area of Application of this Act

Notwithstanding the *lex loci delicti*, section 19, paragraph (2), item 2, paragraph (3), item 2, paragraphs (5) and (6), as well as sections 20 and 20a of this Act shall also apply to acts committed outside the area of application of these provisions if the offender is a German.

Section 22. Exceptions

Sections 18, 20 and 21 of this Act shall not apply to official acts related to chemical weapons performed by—

1. a member or a civilian employee of a force or of a civilian component pursuant to the Agreement of June 19, 1951 between the Parties to the North Atlantic Treaty Regarding the Status of their Forces; or
2. a German on staffs or in installations established on the basis of the North Atlantic Treaty of April 4, 1949.

Section 22a. Other Penal Provisions

(1) A prison sentence of one year up to five years shall be imposed on anyone who—

1. produces war weapons without a licence under section 2(1) of this Act; or
2. acquires from or transfers to another person actual control of war weapons without a licence under section 2(2) of this Act; or
3. has war weapons transported or himself transports them outside an enclosed site within federal territory without a licence under section 3(1) or (2) of this Act; or
4. imports or exports war weapons, transports them through or otherwise brings them into or out of federal territory, without the requisite transport being licensed; or

5. internationally or knowingly transports by ships flying the federal flag or by aircraft entered in the aircraft register of the Federal Republic of Germany such war weapons without a licence under section 4 of this Act as are loaded and unloaded outside federal territory and are not transported through federal territory; or
6. otherwise exercised actual control over war weapons without–
 - a) the acquisition of actual control being based on a licence under this Act; or
 - b) notification having been given under section 12(6), item 1, or section 26a of this Act, unless the provisions of the Act on Firearms are applicable to portable firearms under section 6(3) of that Act; or
7. brokers a contract on acquisition or transfer without a licence under section 4a(1) of this Act or shows that an opportunity exists for concluding such a contract or concludes a contract without a licence under section 4a(2) of this Act.

(2) In particularly serious cases, the sentence shall be between one and ten years' imprisonment. A particularly serious case is generally deemed to exist if the offender commits an act specified in paragraph (1), items 1 through 4, 6 or 7, above for gain or as a member of a gang that has been formed for continually committing such offences, with the assistance of another member of the gang.

(3) In less serious cases, the sentence shall be up to three years' imprisonment or a fine.³

(4) Anyone who commits with negligence an act specified in paragraph (1), items 1 through 4, 6 or 7, above shall be punished by up to two years' imprisonment or by a fine.

(5) A sentence under paragraph (1), items 3 or 4, above shall not be imposed on anyone who, having imported or otherwise brought war weapons into federal territory, voluntarily and without delay hands them over to a supervisory authority, to the Federal Armed Forces or to an authority or agency responsible for maintaining law and order. If actual control of war weapons is acquired by any authority or agency specified in the foregoing sentence without any effort on the part of the person who imported or otherwise brought them into federal territory, his voluntary and genuine endeavor to hand over the war weapons shall be deemed sufficient.

Section 22b. Infringement of Administrative Provisions

(1) An administrative offence shall be deemed to have been committed by anyone who intentionally or negligently–

- 1.4 fails to fulfill a condition under section 10(1) of this Act, does so not in time or incompletely;
2. does not keep a register of war weapons under section 12(2) of this Act, does so incorrectly or incompletely;
3. fails to effect reports under section 12(5) or notifications under section 12(6) of this Act, does so incorrectly, incompletely or not in time or fails to fulfill a condition under the fourth or fifth sentence of section 12(6) of this Act;
- 3a. acts contrary to an ordinance passed under section 12a(1) of this Act in so far as it refers to this administrative fine provision in respect of a particular offence;
4. fails to provide information under section 14(5) of this Act, does so incorrectly, incompletely or not in time;
5. fails to present company records and other documents under section 14(5) of this Act, does so incompletely or not in time;
6. acts contrary to the obligation under section 14(5) of this Act to allow entry into premises.

(2) Such administrative offence shall be punishable by a fine of up to DEM 10,000.⁵

(3) An administrative offence shall also be deemed to have been committed by anyone who intentionally or negligently fails, contrary to section 12(3) of this Act, to hand over a copy of the licence upon handing over war weapons for transport or, contrary to section 12(4) of this Act, fails to carry a copy of the licence during transport. Such an administrative offence shall be punishable

by a fine of up to DEM 1,000.

Section 23. Administrative Authorities

Where they are responsible for supervision under section 14(1) and (2) of this Act, the Federal Minister of Economics, the Federal Minister of Transport and the Federal Minister of Finance shall at the same time be administrative authorities within the meaning of section 36(1), item 1, of the Administrative Offences Act. Section 36(3) of the Administrative Offences Act shall apply *mutatis mutandis*.

Section 24. Confiscation and Extended Forfeiture

(1) War weapons to which an offence under sections 19, 20, 21 or 22a of this Act relates may be confiscated on behalf of the Federal Government; section 74a of the Penal Code shall apply. Even if the requirements of section 74(2) of the Penal Code are not met, they shall be confiscated where the welfare of the Federal Republic of Germany so requires; this shall also apply if the offender acted without fault.

(2) The duty to pay compensation under section 74f of the Penal Code shall be incumbent on the Federal Government.

(3) In the cases specified under section 19(1) and (2), whereby paragraph (2), item 2, shall also apply in connection with section 21; section 20(1), which shall also apply in connection with section 21; and section 22a(1), section 73d of the Penal Code shall apply if the offender commits an act for gain or as a member of a gang that has been formed for continually committing such offences.

Section 25.

[Repealed]

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Part Six Transitional and Final Provisions

Section 26. Prior Licences

Licences granted under the provisional licensing procedure pursuant to Article 26(2) of the Basic Law shall be deemed granted under this Act.

Section 26a. Notification of the Exercise of Actual Control

Anyone who, on the date when accession takes effect, is in actual control of previously acquired war weapons in the territory specified in Article 3 of the Unification Treaty shall notify this to the Federal Office of Economics within two months of accession taking effect, stating the type of weapons, quantity, weapons number or other identification, unless he is exempted from the requirement of a licence for the acquisition of actual control or he has received an order under section 26b of this Act. After expiry of this period, actual control of war weapons that require notification but have not been notified shall no longer be exercised.

Section 26b. Transitional Provisions for the Territory Specified in Article 3 of the Unification Treaty

(1) An act which requires a licence under this Act and has been started or envisaged in the territory specified in Article 3 of the Unification Treaty before the date when accession takes effect and cannot be deferred may be provisionally licensed. In such cases, the requisite licence shall be applied for within one month of the provisional licence being granted. If the licence is refused, the