

# **Federal Law on War Material of 13 December 1996**

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The Federal Assembly of the Swiss Confederation,

given articles 41, 2nd and 3rd paragraphs, and 64bis 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 Dispositions**

### **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 manufacture and transfer of war material and related technology, while permitting the maintenance in Switzerland of an industrial capacity adapted to defence requirements.

### **Article 2 Principle**

The following are subject to authorisation from the Confederation:

- a. the manufacture of war material;
- b. the trade and commerce of war material;
- c. the brokerage of war material;
- d. the importation, exportation, and transit of war material;
- e. the transfer of incorporeal property (intellectual property), including know-how, and the granting of related rights, insofar as they regard war material and they are destined to persons, physical or moral, domiciled or having their headquarters abroad.

### **Article 3** Relation to other legal dispositions

The present legislation operates without prejudice to:

- a. Federal and Cantonal legislation regarding arms;
- b. the prescriptions of customs legislation, the prescriptions regarding payment traffic (*trafic de paiement*) as well as other legislative acts regarding foreign trade and commerce.

### **Article 4** Armament companies of the Confederation

The dispositions regarding initial authorisation (art. 9 to 11) and authorisation to manufacture (art. 13 and 14) are not applicable to armament companies of the Confederation. The dispositions regarding brokerage (art. 15 and 16), importation and exportation (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. "Manufacture", for the purposes of the present law, is to be understood as meaning any professional activity consisting of the production of war material or the modification of the parts essential to its function.
2. "Trade" or "commerce", 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, or, moreover, the transfer of incorporeal property, including know-how, or the concession or granting of related rights.
3. "Brokerage", is to be understood as meaning:
  - a. the creation of essential conditions for the conclusion of a contract which has as its object the manufacture, offer, acquisition, or 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 payment is made or supplied by third parties.

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## **Chapter 2: Prohibition of Certain Arms**

### **Article 7** Nuclear, 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 to store nuclear, biological, or chemical weapons (NBC weapons) or to dispose of them in

any other fashion;

- b. incite anyone to commit an act mentioned at subparagraph a.;
- c. facilitate the commission of an act mentioned at subparagraph a.

2. Do not fall under the scope of the prohibition, acts that are destined to:

- a. permit the responsible agencies to destroy NBC weapons, or
- b. ensure the protection against the effects of NBC weapons or to combat their effects.

3. The prohibition applies, as well, to acts committed abroad, notwithstanding the law applicable in the place of commission of the acts if:

- a. the acts violate agreements of international law of which Switzerland is a member, and
- b. the author is Swiss or is domiciled in Switzerland.

### **Article 8 Antipersonnel mines**

1. It is prohibited to develop, manufacture, procure as an intermediary, acquire, hand over to anyone, import, export, transit, or store antipersonnel mines, or to dispose of them in any other fashion.

2. Do not fall under the scope of the prohibition, acts that are destined to:

- a. permit the responsible agencies to destroy antipersonnel mines, or
- b. ensure the protection against the effects of antipersonnel mines or to combat their effects.

3. The term "antipersonnel mines" is to be 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, proximity, or contact of a person, and destined to put out of combat, injure, or kill one or several persons.

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## **Chapter 3: Initial Authorisation**

### **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 destined for the Swiss Army.

### **Article 10 Conditions**

1. Initial authorisation is granted to persons, physical or moral, who:

- a. offers the necessary guaranties of a regular management of their business, and
- b. the foreseen activity is not contrary to the country's interest.

2. If, in order to undertake an activity, the applicant must, as well, be a holder of an authorisation required by the Federal or Cantonal legislation relating to arms, the initial authorisation will not be delivered unless the first authorisation has been granted.

#### **Article 11 Scope**

1. The initial authorisation is untransferable and is valid only for war material that it mentions. It can be limited in time and subject to charges and conditions.
2. It can be revoked, partially or completely, if the conditions of grant are no longer fulfilled.
3. It does not replace the authorisations required by other dispositions of Federal or Cantonal law.

### **Chapter 4: Specific Authorisations**

#### **Section 1: Types of Authorisations**

##### **Article 12**

For the activities subject to an authorisation regime according to the present law, the following specific 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.

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#### **Section 2: Authorisation to Manufacture**

##### **Article 13 Object**

1. Any person who wishes to manufacture war material on the Swiss territory must be a holder of, as well as the initial authorisation, an authorisation to manufacture for each specific case.
2. Sub-contractors do not require an authorisation to manufacture
3. No authorisation to manufacture is required for the filling of orders of the Confederation bearing on war material destined 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 destined to be exported, the conditions necessary for the granting of an export authorisation (art. 22) must be fulfilled.
3. Once the authorisation to manufacture for war material destined for exportation has been granted, the authorisation to export the said material will not be refused unless exceptional circumstances

require it.

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### **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 for 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, brokerage authorisations can be suspended or revoked.

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### **Section 4: Authorisations to Import, Export, and Transit**

#### **Article 17 Object**

1. The importation, exportation, and transit of war material is subject to authorisation from the Confederation.

2. An authorisation to transit is required for deliveries to a customs warehouse and for deliveries, from such a warehouse, abroad.

3. The Federal Council regulates the regime for authorisation and the procedure regarding transit of war material in air space.

4 No authorisation is required for:

a. the non professional importation of shoulder firearms by individuals and their corresponding munitions.

b. the importation of war material destined for the Confederation.

#### **Article 18 Declaration of non re-exportation; exceptions**

1. As a general rule, an export authorisation can not be granted unless the delivery is to a foreign government, or to a company working for such a government, and that the latter has declared that the material shall not be re-exported (non re-exportation declaration).

2. It is possible to forego the non re-exportation declaration for separate parts or assembly parts of war material when it is established that, once abroad, they will be integrated into a product, and will not be re-exported as such, or in cases of anonymous parts of negligible value in relation to the finished war material.

## **Article 19** Scope

1. Authorisations of importation, of exportation, and of transit are of a limited time period.
2. They can be suspended or revoked if exceptional circumstances justify it.

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## **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, if it is foreseen that the said transfer will take place from Switzerland to a person, physical or moral, domiciled or having his headquarters abroad, is subject to authorisation. The conclusion of a contract, the object of which is the concession of related rights to such incorporeal property and know-how, is equally subject to authorisation.
2. Is not subject to authorisation, incorporeal property, including know-how:
  - a. required for works relating to the installation, control, and repair of war material, when such works are of a routine nature and the exportation of the material had been authorised;
  - b. that has fallen into the public domain;
  - c. that must be divulged in the context of a request for a patent in another state, or
  - d. used for the purposes of fundamental research.
3. The Federal Council can provide for exceptions to certain countries.

### **Article 21** Conditions

The authorisation will not be granted if the acquirer is domiciled or has his headquarters in a country for which the exportation of the war material in question is not authorised.

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## **Section 6: Conditions of Authorisation for Business Abroad**

### **Article 22** Manufacture, brokerage, exportation, and transit

The manufacture, brokerage, exportation, and the transit of war material towards foreign recipients are authorised if the activities do not contravene international law and are not contrary to principles of Swiss foreign policy and its international obligations.

### **Article 23** Shipment of spare parts

The exportation of spare parts destined for war material, whose exportation has been authorised, will be authorised unless exceptional circumstances arise that would justify the revocation of the first authorisations.

### **Article 24** Importation

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

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## **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.

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## **Chapter 5: Controls, Procedures, Fees**

### **Article 26 Controls**

The Federal Council issues dispositions regarding the control of manufacture, of trade and commerce, of brokerage, of importation, of exportation, and of transit of war material, as well as controls regarding the transfer of incorporeal property, including know-how, and the concession of related rights, when these regard war material.

### **Article 27 Obligation to inform**

The holders of an authorisation, for the purposes of the present law, as well the holders and the personnel of the concerned companies, are obligated to supply, to the control agencies, any information allowing the control in due form and to present to them all the necessary documents.

### **Article 28 Prerogatives of the control agencies**

1. The control agencies have the right to enter into the commercial premises of the persons subject to the obligation to inform, as well as visit them during normal working hours and without prior notice; they also have the right to take information regarding useful documents. They can sequester potential evidence. In case of suspicion of illicit acts, more rigorous dispositions of procedural law are reserved.
2. In order to ensure their control, they may, in case of need, ask the Cantonal or Communal police agencies, the investigation agencies from the customs administration, and the federal police to assist.
3. They are empowered, within the limits of the objectives of the present law, to access and use personal information. With respect to sensitive information, only information regarding proceedings, or penal or administrative sanctions may be used. The use of other sensitive information is authorised only when it is indispensable to 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 the rules of procedure. Border control is the responsibility of customs agencies.

2. The Federal Council pronounces itself with respect to requests whose scope in the field of foreign policy or security policy is considerable. Moreover, the procedure is governed by Federal administrative procedural law.

3. The procedure applicable to recourses submitted against actions taken in virtue of the present law is governed by general dispositions of Federal administrative procedural law.

#### **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 heads police enquires. It has the right to access and 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 by the present law are subject to fees. The Federal Council establishes the sum.

#### **Article 32** Information to Parliament

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

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### **Chapter 6: Penal Dispositions**

#### **Article 33** Infractions to the authorisation and obligatory declaration regime

1. Will be liable to imprisonment or to, at most, a fine of one million francs, any person who intentionally:

- a. without being the holder of an authorisation or in violation of the conditions or charges established in the authorisation, manufactures, imports, transits, exports, trades, or brokers war material, or concludes contracts regarding the transfer of incorporeal property, including know-how, or the concession of related rights;
- b. in a request, supplies false or incomplete information, while such information is essential to the granting of an authorisation, or makes use of such a request made by a third party;
- c. does not indicate or indicates in a 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. The sentence can carry a fine of up to 5 millions francs.

3. If the author acts negligently, the sentence shall be a term of imprisonment of six months at the



most or a fine of 100 000 francs at the most.

4. In cases of non authorised importation 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 ten years at the most or imprisonment any person who, intentionally and without being able to invoke one of the exceptions mentioned at article 7, paragraph 2:

a. develops, manufactures, procures as an intermediary, acquires, hands over to any person, imports, exports, transits, or stores nuclear, biological, and chemical weapons or disposes of them in another fashion,

b. incites anyone to commit an act 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 5 million francs.

3. If the author commits the act out of negligence, the penalty will be of imprisonment of 12 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 of which Switzerland is a party, and

b. its author is Swiss or is domiciled in Switzerland.

#### **Article 35** Infractions to the prohibition of antipersonnel mines

1. Will be punished with confinement of up to ten years or imprisonment, any person 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, or stores antipersonnel mines, or disposes of them in any fashion.

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 5 million francs.

3. If the author commits the act out of negligence, the penalty will be of imprisonment of 12 months at the most or a fine of up to 500 000 Francs.

#### **Article 36** Contravention

1. Will be punished by sentence (*punie des arrêts*) 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 at article 27 and 28, 1st paragraph, or gives false information on that subject;

b. contravenes the present law in another fashion, one of its executory dispositions whose violation is declared to be punishable, or a decision based on the penal dispositions of the present article, without the act being punishable by virtue of another disposition.

2. Attempt and complicity are punishable.

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

4. Penal proceedings are prescribed at five years. The delay can be prolonged by a maximum of half if the prescription period 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 not guarantee that it will be used in a fashion consonant with the law. The confiscated war material, as well as the eventual proceedings of its sale are devolved to the Confederation.

#### **Article 39** Confiscation of patrimonial commodities

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

#### **Article 40** Jurisdiction; obligation to denounce

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

2. The authorities of the Confederation and of the Cantons, tasked with the granting of authorisations and of control, the police agencies of the Cantons and the Communes, as well as the customs agencies, are required to denounce infractions of the present law that they have discovered or have knowledge of during the course of their duties to the Public Minister of the Confederation.

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### **Chapter 7: Administrative Co-operation**

#### **Article 41** Administrative co-operation in Switzerland

The competent authorities of the Confederation, as well as the police agencies from the Cantons and the Communes can communicate amongst each other and inform the relevant supervisory authorities of the facts necessary for the execution of the present law.

#### **Article 42** Administrative co-operation between the Swiss authorities and foreign authorities

1. The Federal authorities competent 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 structures, and co-ordinate their investigation, in as much as:

- a. the execution of the present law or comparable foreign prescription require it, and
- b. the foreign authorities, organisations, or structures in question are held to professional secrecy or by an equivalent duty of discretion, in their field, all ensuring against economic espionage.

2. They can request from foreign authorities, as well as international organisations or structures, the communication of necessary information. To that end, they may supply information regarding:

- a. the nature, the quantity, and the place of destination and use, the use and the recipients of the merchandise, of parts, incorporeal property, including know-how, or related rights;
- b. 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 the concession of related rights;
- c. the financial modalities of the operation.

3. If the foreign state grants reciprocity, they may communicate information mentioned at paragraph 2, with or without prior request, if the foreign authority gives the following assurances:

- a. the information will be used to end consonant with the present law, and
- b. the information will not be used in penal proceedings unless it was obtained in conformity with dispositions relating to international judicial co-operation.

4. They may, as well, supply the information in question to international organisations or structures if the conditions stipulated to at paragraph 3 are fulfilled, notwithstanding the reciprocity requirement.

5. The dispositions relating to international judicial co-operation in penal matters are reserved.

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## **Chapter 8: Final Dispositions**

### **Article 43 Execution**

1. The Federal Council decrees the executory dispositions.

2. The Federal Military Department is tasked with the execution of the present law.

(Added as a footnote by Ordinance of 25 February 1998 relating to the disposition attributing competency in the law on war material, "Federal Department of the Economy, Federal Department of Justice and Police".)

### **Article 44 Abrogation of the current law**

The Federal law of 30 June 1972 regarding war material is abrogated.

### **Article 45 Modification of the current law**

The Federal law of 25 March 1977 regarding explosive substances is modified as follows:

Art. 9, 1st paragraph.

1. Are subject to authorisation from the Confederation, the manufacture of explosive matter, as well as its importation, exportation, or transit. The legislation regarding war material is reserved with respect to military explosive substances. The authorisation to manufacture explosive substances destined for a civilian use includes the right to sell them on Swiss territory.

Art. 40, 2nd and 3rd paragraph abrogated.

## **Article 46** Transitory dispositions

1. The activities that did not require authorisation in virtue of the previous legislation regarding war material, and that are 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 disposition of the Federal law of 25 June 1982 regarding foreign economic measures are reserved.
2. Contracts regarding the transfer of incorporeal property, including know-how, or the concession of related rights, that have been concluded before the entry into force of the present law, do not require the authorisation provided for 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 dispositions until the entry into force of a Federal legislation regarding arms.
3. The Federal Council regulates the trade and commerce of firing powder for civilian use until the entry into force of legal dispositions 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 24 March 1997 without being invoked.
2. The present law enters into force 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

Published in the *Recueil Officiel* 1998, p. 794.

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