



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

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16 February 2012

**Delegation of Switzerland to the Organization for Security
and Co-operation in Europe (OSCE)**

ENGLISH only

Note 52/2011

The Delegation of Switzerland to the Organization for Security and Co-operation in Europe (OSCE) presents its compliments to all participating States to the Forum for Security Co-operation and to the Conflict Prevention Centre. With reference to Decision No. 11/07 of the Forum for Security Co-operation "An Information Exchange with regard to OSCE Principles on the Control of Brokering in Small Arms and Light Weapons" (FSC.DEC/11/07), the Delegation has the honour to submit Switzerland's Updated One-Off Information exchange with regard to OSCE Principles on the Control of Brokering in Small Arms and Light Weapons, valid as of 31 December 2011

The Delegation of Switzerland avails itself of this opportunity to renew to all other Delegations of the participating States to the Forum for Security Co-operation and to the Conflict Prevention Centre the assurance of its highest consideration.



Vienna, 23rd December 2011

To all Delegations to the OSCE
To the Secretariat of the Conflict Prevention Centre

V i e n n a

*) Change of distribution status, text remains unchanged



OSCE

AN INFORMATION EXCHANGE WITH REGARD TO OSCE PRINCIPLES ON THE CONTROL OF BROKERING IN SMALL ARMS AND LIGHT WEAPONS

UPDATED ONE-OFF INFORMATION EXCHANGE

Switzerland

31 December 2011

Question	Sources	Question	YES	NO
1	PoA II.14	Does your country have laws, regulations and/or administrative procedures governing brokering in SALW?	X	
2		<p>List laws and/or administrative procedures regulating SALW brokering in your country.</p> <p>Brokering activities of legal entities and persons domiciled in Switzerland intending to trade in firearms for business purposes are required to obtain a general trader's license (Article 17 WA).</p> <p>Brokering activities for recipients abroad fall within the scope of the WMA. Brokering on Swiss territory (regardless of nationality) of war material on a professional basis for recipients abroad, irrespective of the location of the war material, requires an initial license (Article 9, para. 1 WMA). No initial license is required for those acting as professional brokers for hand guns and small arms and holding therefore a general trading license under the legislation on weapons.</p> <p>In addition to the initial license in terms of Article 9 WMA or the general trading license under the legislation on weapons, any brokering activity of war material on Swiss territory for a recipient abroad requires a specific authorisation for each individual case (Article 15, para. 1 WMA). No specific authorisation is required, if the person engaged in brokering activities operates his own production plant for the manufacture of the war material involved in the brokerage in Switzerland (Article 6, para. 1 WMO). In any case, the brokering of war material destined to the countries listed in Annex 2 to the WMO is not subject to a specific authorisation (Article 6, para. 2 WMO).</p> <p>All SALW brokers are registered either by fedpol or by SECO.</p>		
3	GGE Report, para 63(i)	Are those laws and procedures part of the national export control system?	X	
4	FSC.DEC /8/04	Does your country have a definition of brokering activities of persons and entities?	X	
4a		<p>If yes, provide the definition.</p> <p>“Brokerage” is:</p> <p>a. the creation of the essential requirements for the conclusion of contracts relating to the manufacture, offer, acquisition or passing on of war material, the transfer of intellectual property, including know-how, or the granting of rights thereto, insofar as they relate to war material;</p> <p>b. the conclusion of such contracts if this service is provided by third parties. (Article 6 WMA).</p>		
5		Does your country require brokers to register before they can apply for brokering licences?	X	
		Brokers of war material need a valid initial licence in order to perform brokering activities. They are registered through the procedure for the initial licence (Articles 9 and 10 WMA and Article 3 WMO).		
6		Does your country require a licence to engage in brokering activities?	X	
		See question 5		
7		Does your country make a background check on past involvement in illicit activities before registering a broker or issuing a brokering licences?	X	

		The initial license is granted to natural or legal persons if the applicant offers the required guarantee for the proper conduct of their business affairs and if the intended activity is not contrary to national interest.		
8	PoA II.14	Does your country keep a register of SALW brokers/traders?	X	
		All SALW brokers are registered either by fedpol or by SECO.		
9	FSC.DEC /8/04	Does your country require a licence for SALW brokering activities on the territory of your country regardless of the nationality of the brokers?	X	
		Swiss legislation on war material applies the principle of territoriality (Article 9 WMA). Anyone on Swiss territory who wishes to broker war material for a recipient abroad, without operating his own production plant for the manufacture of war material in Switzerland, requires, in addition to an initial licence according to Article 9 WMA, a specific licence for each individual case (Article 15 WMA). See question 4a for the nuanced definition of brokerage under WMA.		
10		Does your country control brokering activities outside your territory carried out by brokers of your country's nationality?		X
11		Does your country control brokering activities outside your territory carried out by non-citizen residents who are established on your country's territory?		X
12	BPG, Brokering, V(1)	What is the policy on deciding which State's jurisdiction is appropriate for each brokering transaction? See question 9		
13	BPG, Brokering, V	Does your country have requirements for end-use documentation that must be met before each brokering activity is authorized?		X
13a	(5(i))			
14	PoA II.14	Does your country require a licence, permit or other authorization for each brokering transaction? Anyone who on Swiss territory wishes to broker war material for a recipient abroad, without operating his own production plant for the manufacture of war material in Switzerland, requires, in addition to an initial licence in terms of Article 9 WMA, a specific licence for each individual case (Article 15 WMA). Whoever manufactures war material in Switzerland in his own production plant may broker or trade abroad without a specific licence only if an initial licence for the brokerage or the trade of products analogous to those manufactured in the production plant has been granted. The brokering of war material destined to the countries listed in Annex 2 to the WMO is not subject to a specific authorization (Article 6 WMO).		X
15	GGE Report para 44	Are such applications for a licence, permit or other authorization considered for approval on a case-by-case basis?	X	
16		Are there exceptions to the requirement to hold a licence or authorization for a brokering transaction?	X	
16a		Details (e.g. if the transaction is on behalf of the police or armed forces or other government officials) No specific authorisation is required, if the person engaged in brokering activities operates his own production plant for the manufacture of the war material involved in the brokerage in Switzerland (Article 6, para. 1 WMO). In any case, the brokering of war material destined to the countries listed in Annex 2 to the WMO is not subject to a specific authorisation (Article 6, para. 2 WMO).		

17		<p>What are the criteria for granting a licence, permit or other authorization?</p> <p>The manufacture, brokerage, export and transit of war material for recipients abroad shall be authorised if this is not contrary to international law, international obligations, and the principles of Swiss foreign policy.</p> <p>To grant specific licenses the following criteria listed in Article 5 WMO are taken into account:</p> <ul style="list-style-type: none"> - maintenance of peace, international security and regional stability; - the situation in the country of destination, in particular with regard to respect for human rights and the non-use of child soldiers; - the efforts made by Switzerland in the area of development cooperation; - the conduct of the country of destination towards the international community, in particular with regard to compliance with international law; - the attitude of the countries which are participating with Switzerland in international export control regimens. <p>According to Article 5, para. 2 WMO licenses shall not be granted for export, trade and for contracts under Article 20 WMA if:</p> <ul style="list-style-type: none"> - the country of destination is involved in an internal or international armed conflict; - the country of destination violates human rights in a systematic and serious manner; - the country of destination is listed among the least developed countries on the OECD-DAC list of development aid recipient; - there is a high-riks in the country of destination that the exported weapons will be used against the civilian population; or - there is a high risk in the country of destination that the exported weapons will be passed on to an undesirable end recipient. 		
18	BPG, Brokering, V(3)	Is <i>ex post facto</i> licencing possible?		X
18a		----- If yes, under which conditions?		
19		Does your country have measures to validate the authenticity of documentation submitted by the broker?	X	
19a		<p>----- If so, describe those measures.</p> <p>The verification of submitted information or documents is not regulated by law but subject to an internal directive on this matter. The SECO relies on the expertise of the Federal Department of Foreign Affairs (FDFA) and its representatives abroad.</p>		
20	FSC.DEC /8/04	Does your country keep records of all licences or written authorizations issued?	X	
20a		----- If yes, how long are the records kept for?		
		a) 10 years		
		b) Indefinitely		
		c) Other	X	
		On the part of the authorities, all granted licenses are kept in paper form for at least 30 years either by SECO or the Swiss Federal Archives (SFA). In addition, since 1998 all data are recorded electronically.		
21	BPG, Brokering, V(4(ii))	Does your country require brokers to report regularly on their activities?		X
21a		----- If so, describe.		
22	PoA II.3	Is it a criminal offence to engage in a SALW brokering transaction without a licence or authorization in your country?	X	

24		Does your country regulate activities that are closely associated with the brokering of SALW?	X	
24a		If so which of the following activities are regulated (check relevant boxes)?		
		a) Acting as dealers or agents in SALW	X	
		b) Providing technical assistance		X
		c) Training		X
		d) Transport		X
		e) Freight forwarding	X	
		f) Storage	X	
		g) Finance	X	
		h) Insurance		X
		i) Maintenance	X	
		j) Security		X
		k) Other services		X
		Comments [type text]		
25		Are these activities regulated by legislation on brokering or any other legislation?	X	
26	PoA II.14	<p>What penalties or sanctions does your country impose for illegal brokering activities?</p> <p>Article 33 WMA regulates offences against licensing and reporting obligations as following: Whoever willfully commits any of the following acts is liable to a term of imprisonment or to a fine of up to 1 million Swiss Francs:</p> <ul style="list-style-type: none"> - the manufacture, import, transit, export, trade in, or brokerage of war material, or the conclusion of contracts for the transfer of intellectual property including know-how relating to war material, or for the granting of rights thereto without the relevant licence or in violation of the conditions or requirements stipulated in a licence; - 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; - the failure to report war material for import, export or transit or the making of a incorrect declaration in respect of its import, export or transit; - the delivery, transfer or brokerage of war material for a recipient or destination other than that named in the licence; - the transfer of intellectual property, including know-how, relating to war material, or the granting of rights thereto to a recipient or destination other than that named in the licence; - the participation in financial dealings relating to an illegal war material transaction or the procurement funding for such a transaction as an intermediary. <p>In serious cases the penalty is imprisonment for up to ten years. This may be combined with a fine of up to 5 million Swiss Francs. If the act is committed through negligence, the penalty is imprisonment for up to six months or a fine of up to 100 000 Swiss Francs. In the case of unauthorised import or transit, an act committed abroad is also a criminal offence.</p>		
27	PoA II.14	If the answer to question 1 is “no”, does your country wish to request assistance in developing laws, regulations and/or administrative procedures to regulate brokering in SALW?		
28		What kind of assistance do you require?		
29		Has your country developed a project proposal for assistance?		
29a		Does your country require training on controlling brokering activities in SALW?		
30	PoA II.6	During the reporting period, was action taken against groups or individuals engaged in illegal brokering (e.g., prosecution)?		X

30a		There were no criminal prosecutions nor other legal actions relating to illegal brokering activities.		
31		Is your country content for these replies to be published on the OSCE website?	X	