

**MINISTRY OF FOREIGN AFFAIRS
OF THE REPUBLIC OF POLAND**

**EXPORTS OF ARMS AND MILITARY
EQUIPMENT FROM POLAND
Report for the years 2008–2009**

Warsaw 2010

**Ministry of Foreign Affairs
of the Republic of Poland**

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1. Introduction

The Ministry of Foreign Affairs hereunder presents Poland's first national report on the exports of arms and military equipment. It based on the following premises:

On 8 December 2008 the European Council, acting within the framework of the Common Foreign and Security Policy, adopted Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment. Thus, the EU Code of Conduct concerning arms exports, applied voluntarily by Member States since 1998, was replaced with a binding act of Community law.

Poland, acting in a spirit of co-responsibility for strengthening international peace and security and seeking to counteract terrorist threats, joined the EU Code of Conduct from the moment of its inception and applied its criteria when issuing arms and military equipment export licenses. Poland affirmed that commitment during the process of accession to the EU, adopting the *acquis communautaire* that included the Code.

The new status of the Common Position stipulates that despite its legally binding character it should also be implemented into national law. In the case of Poland this will require introduction into the text of the *Act of 29 November 2000 on foreign trade in goods, technologies and services of strategic importance to state security and to the maintenance of international peace and security* of the criteria for the issuance of export permits in their new wording and of provisions for the publication of annual arms export reports.

The latter necessitates a separate approach because Poland is one of the few EU countries that have not yet published such a report, though pursuant to its undertakings it has supplied data for the annual reports and registers of the relevant international organizations (UN, EU, Wassenaar Arrangement). However, even though Poland fulfills the fundamental international obligations concerning transparency of the arms trade, the state administration's communication with the society in this area might be considered insufficient. In view of the above the Ministry of Foreign Affairs deems it necessary to present the appropriate information, including data on arms and military equipment exports in the years 2008-2009, without waiting for the adoption of national regulations imposing such a statutory obligation on the authorities.

An explanation is due why the information is being presented by the Ministry of Foreign Affairs and not the Minister of Economy, who pursuant to the act is the authority competent in matters of arms exports. This follows from the assumption that arms exports policy is a key component of foreign policy, which falls within the competency of the Minister of Foreign Affairs. Similar practice is also followed by the majority of other states belonging to the international arms exports community. A corresponding division of roles between the Polish economy and foreign ministries also takes place within the working forums of the European Union: the Ministry of Economy takes the lead in the working group tasked with export control of dual-use goods and technologies, while the Ministry of Foreign Affairs plays a similar role in the conventional arms group. Furthermore, it is envisaged in the ongoing works on amendment of the relevant domestic regulations that it is the Ministry of Foreign Affairs that will have the formal duty of publishing the annual reports on arms and military equipment exports.

2. Historic context of export controls in Poland

Following the changes in our part of Europe in the late Eighties, in February 1990 the COCOM¹ member states relaxed their restrictions on the access of Poland, Hungary and Czechoslovakia to listed goods and technologies.

The access of Poland and other countries of the region to advanced goods and technologies was contingent on the fulfillment of the following requirements:

- the interested country had to possess an appropriate system of security measures and controls concerning both imported and domestically produced goods, corresponding to the system of controls in COCOM countries,
- the system had to be based on effectively implemented, statutory regulations,
- the interested country had to refrain from illegal trade in COCOM goods and technologies,
- the interested country had to refrain from collaboration with the services of COCOM-listed countries and to prevent their attempts to acquire listed goods and technologies,
- the control system also had to include nuclear, chemical, biological and missile goods and technologies covered by nonproliferation regimes.

Works to establish a national system for the control of foreign trade in strategic goods and technologies started in Poland in March 1990. Several months later the Council of Ministers endorsed a model of the Polish controls system, after which Poland exchanged diplomatic notes with 8 COCOM states and the Polish Government issued a declaration on the introduction of the system and its commitment to international cooperation in this area.

The relevant legislative process was launched in December 1991 and ended on 2 December 1993 with the adoption by the Sejm of an act on special controls of foreign trade in goods and technologies in connection with international agreements and commitments, published in the Journal of Laws No. 129 of 24 December 1993; the act entered into force on 25 March 1994.

The legislation and the Polish Government's undertaking to ensure effective functioning of the controls system led to Poland's removal from the COCOM list on 25 March 1994, which had considerable political significance even though it took place just a few days before COCOM itself was disbanded. As early as the autumn of 1993, when it was obvious that COCOM was not attuned to the new world political situation, member states and six countries traditionally cooperating with COCOM (Austria, Ireland, Finland, New Zealand, Switzerland and Sweden) began consultations on the establishment of a new international nonproliferation treaty, with the working name of New Forum. It was to provide control over international trade in conventional arms and advanced technologies with potential military application. The talks on creating the new organization began in August 1995 with the

¹ COCOM/Coordinating Committee for Multilateral Export Control/ existed from 1949, affiliating 17 leading Western countries. The organization was dedicated to controlling exports to Central and Eastern Europe of strategic goods, technologies and services capable of enhancing their military and economic potentials. Due to its informal character, COCOM was not based on any international treaty and operated on the basis of a 'gentlemen's agreement'. The export control system developed by COCOM radically curtailed the access of Central and Eastern European countries to modern military and civilian technologies.

participation of Poland, the Czech Republic, Slovakia, Hungary and Russia. Since December 1995 the new nonproliferation agreement has been known as the Wassenaar² Arrangement.

In 1969 Poland, as one of the first signatory states, ratified the Nuclear Nonproliferation Treaty (NPT). However, developments during the Seventies exposed the inadequacy of the NPT control mechanisms. That led in 1975 to the establishment of the so-called London Club or the Nuclear Suppliers Group (NSG), whose members systematically exchange information on the observance of control regimes and consult on the composition of control lists.

In 1978 Poland, as an NSG member, pledged that it would supply listed nuclear materials and technologies only to countries that agreed to submit their nuclear programs to controls by the International Atomic Energy Agency in Vienna.

The implementation of a national system for control of listed goods and technologies made it possible for Poland to apply for membership in other international nonproliferation agreements. In November 1994 Poland was admitted to the Australia Group, an international regime for the control of trade in chemical precursors, manufacturing facilities and equipment, biological agents, human, animal and plant pathogens and biological equipment – that is goods and technologies with broad civilian applications that can also be used for biological and chemical weapons research and production.

In 1998 Poland joined the Missile Technology Control Regime (MTCR) – an international agreement for the control of trade in missile delivery systems as well as goods, materials and components that can find use in missile systems for the delivery of warheads.

In line with its commitment to integration, Poland sought to harmonize Polish export regulations with European Union standards, which had decided to introduce unified export rules. Accordingly, Poland adopted goods and technology control lists compliant with their Union counterparts.

The country's economic and technological advancement and the evolution of the international legal environment induced Poland to draft new export control regulations. They were incorporated in the Act of 29 November 2000 on foreign trade in goods, technologies and services of strategic importance to state security and to the maintenance of international peace and security. The act was amended in 2004 in connection with Poland's accession to the European Union. New experience in subsequent years led to further changes in the *acquis* – which in turn has necessitated additional amendments to domestic law. The relevant works, conducted by the Ministry of Economy in collaboration with other interested ministries and government agencies, are well advanced.

² After Wassenaar, a district of The Hague where the talks were held.

3. Basic elements of international export controls

Export controls, both in the European Union and around the world, are an element of security policy, effectiveness of which is enhanced through the application of certain instruments of trade policy.

This ensues from the peculiarity of the goods involved, which are covered by international export controls. They include conventional and mass destruction weapons, arms and a broad group of products with both civilian and military uses. That group of dual-use goods includes manufacturing facilities, control and measuring equipment, software and production and servicing technologies. In the age of terrorist threats all of them might pose a potential danger to international peace and security and for that reason are the subject of cooperation between several dozen countries, designed to monitor international trade in these items.

Export controls, as an instrument of state security policy, apply to international trade and implement control mechanisms and instruments connected with typical trade and customs procedures. They constitute a non-tariff restriction on trade, implying the necessity of obtaining a license (permit in Poland) for various forms of trade, including non-material transfers, when no formal customs clearance is conducted, or when a domestic broker takes part in a transaction between companies from other countries and the product in question does not cross the territory of Poland or the customs area of the European Union. The process of issuing licenses and related end-user certificates, international import certificates and delivery verification certificates is the prerogative of the national export controls authority, which function in Poland is fulfilled by the Minister of Economy. This process is a component of the international monitoring system.

National and international cooperation between export control authorities, the customs service, the foreign service and special services is a crucial element of export controls. It is governed by the Act of 29 November 2000 on foreign trade in goods, technologies and services of strategic importance to state security and to the maintenance of international peace and security, which specifies the prerogatives of the authorities involved in issuing export trade permits, with particular reference to the coordinating and controlling competences of the Minister of Economy.

The political and legal environment of international export controls is composed of international treaties and conventions on the nonproliferation of weapons of mass destruction, the United Nations and certain other specialized international organizations and, most importantly, the nonproliferation regimes (agreements) affiliating countries that cooperate on a voluntary, non-treaty basis, motivated by the wish to pursue a common security policy.

Every nonproliferation agreement determines, by way of consensus, general export control guidelines and detailed lists of goods subject to controls adapted to the particular area of interests and responsibility of the given regime (i.e. separate lists for nuclear, chemical and biological weapons, missile technologies and modern conventional weapons). It is the rule that exports of arms and dual-use goods are banned to countries covered by UN, EU and OSCE embargos. In some cases exports of such goods are possible on certain conditions, though this always requires a political decision, frequently taken at the top level. Also, shipments might be restricted to countries that are not formally subject to international sanctions but could undermine international security or human rights. Furthermore, increasing use is being made of the "catch-all"

clause when issuing licenses, which means that licenses have to be obtained for “civilian” goods that are not listed but could nevertheless impact defense, human rights or increase the threat of terrorism.

Nonproliferation agreements left the details of export controls up to the respective member states. However, that approach caused diverse technical and organizational problems within the European Union when the single market was being established. For that reason the EU Commission attempted in the mid-Nineties to draft a regulation that would unify the export control rules in all the states of the Fifteen. Those efforts yielded partial success in the form of the repeatedly amended Community regime for the control of dual use goods and technologies, including a list of such goods and technologies covered by all the nonproliferation agreements. Arms export controls are currently regulated under the relevant Common Position of the Council, which is legally binding and requires implementation of its provisions into national laws.

The EU Council takes the lead on political decisions that relate to nonproliferation and export controls. At its session devoted to external affairs the Council considers the total scope of foreign and security policy, based on the protection of common values and fundamental interests, the Union’s independence, integrity and security, preservation of peace, consolidation of democracy, observance of human rights and fundamental freedoms.

The Council’s works in this regard are assisted by the Permanent Representatives Committee and Political and Security Committee, which prepare opinions worked out at experts’ level by the Union’s working organs tasked with export controls:

- Working Party on Dual-Use Goods

The Party prepares concepts and concrete proposals of legislation which, after consulting with the Commission and legal services, it submits at Council sessions. The Party usually conducts up to ten meetings a year, depending on the Party Chair, who is a representative of the state currently holding the Presidency.

The Export Controls Department of the Ministry of Economy is the leading national authority as regards the Party.

- Dual-Use Coordination Group, established under article 23 of Council Regulation (EC) 428/2009/CFSP

The group examines all questions relating to the implementation of Community law in the area of controls of dual-use goods raised by the Commission or Member States and deals with the harmonization of practical procedures.

- Council Working Group on conventional arms exports (COARM)

It plays a similar role as the Working Party, though with focus on the Union’s arms trade policy. It does not concern itself with the practice and mechanisms of controls, which remain a prerogative of national authorities.

The Security Policy Department of the MFA is the leading national authority as regards the Group.

The system of exchange of information on export license denials and the duty to consult with other Member States that have denied licenses before granting a license for an essentially identical transaction is a powerful instrument of exports control both in the framework of the non-proliferation agreements and within the EU.

It is crucial to balance political, social and economic interests when enforcing export controls. The fundamental document of the Wassenaar Arrangement known as the Initial Elements, declares that the Arrangement has been established to contribute to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods, thus preventing destabilizing accumulations. It is also a goal of the Arrangement to prevent the acquisition of conventional arms and dual-use goods and technologies by terrorist groups and organizations as well as by individual terrorists. However, any measures taken must not impede bona fide transactions.

4. State policy on nonproliferation and export controls

In its nonproliferation and export controls policy the Polish Government adheres to the country's international obligations stemming from ratified international treaties as well as commitments made to international organizations and voluntary nonproliferation agreements.

These include:

1. Treaties and conventions:

- **Nuclear Nonproliferation Treaty (NPT):** prohibits states possessing nuclear-arms technology from selling it to other countries and obligates signatory states to refrain from its development. Ratified by Poland (3 May 1969) and 188 other states;
- **Chemical Weapons Convention (CWC):** in force since 1997, ratified by 182 states. It bans the production, development, stockpiling, transfer, acquisition and use of chemical weapons. Signatories are obligated to report possession of chemical weapons and their destruction and to supply data on their chemical industries;
- **Biological and Toxin Weapons Convention (BTWC):** signed in 1972, entered into force in 1975. It bans the development, production and stockpiling of biological weapons and toxins and orders the destruction of their means of delivery. Currently, 155 states are parties to the Convention;
- **Convention on Certain Conventional Weapons (CCW):** entered into force on 2 December 1983, Poland has been a party to the CCW since that year. It has been appended with 5 additional protocols which ban the use of certain types of landmines, incendiary weapons and blinding lasers. In 2003 Poland ratified the protocols on landmines and lasers;
- **Convention on the Prohibition of Anti-Personnel Mines (Ottawa Convention):** it obligates the parties to introduce a complete ban on anti-personnel mines and destroy their stockpiles within 4 years of its ratification. It is an important instrument of international humanitarian law. Poland signed the Convention in 1997, has not yet ratified it but voluntarily fulfills most of its provisions: it does not produce and export anti-personnel mines or use them in military operations. The process of ratification is expected to begin within the next few years.

2. International organizations:

- **United Nations:** has the goal of ensuring international peace and security, development of cooperation between nations and promotion of human rights. Poland adheres to Security Council resolutions, including those on sanctions against states and organizations that pose a threat to international peace and security, and fully implements them into national law;
- **Organization for Security and Cooperation in Europe:** established on 1 January 1995 through the transformation of the Conference on Security and Cooperation in Europe into an organization. It is dedicated to the prevention of conflicts in Europe;
- **European Union:** as a member state Poland fully participates in the implementation of the Common Foreign and Security Policy, which upholds UN Security Council resolutions, including those

on sanctions and on joint undertakings to prevent the proliferation of weapons of mass destruction and excessive accumulation of small arms and light weapons;

- **Organization for the Prohibition of Chemical Weapons (OPCW):** implementing body of the Chemical Weapons Convention.

3. Control regimes and nonproliferation agreements:

Informal nonproliferation agreements, also called control regimes, constitute a peculiar form of international cooperation in the sphere of export controls. They are a form of broader implementation of commitments stemming from multilateral agreements reached by consensus. Poland is a member of all the export control regimes and nonproliferation groupings:

- The Zangger Committee (ZC): works on establishing it started in 1971 though it has formally existed since 1974. It affiliates 37 countries – exporters of key fissile-material technologies;
- Nuclear Suppliers Group (NSG): in existence since 1975, it affiliates 46 states;
- The Australia Group: established in 1985, it affiliates 40 states;
- The Missile Control Technology Regime (MCTR): launched in 1987, it affiliates 34 states;
- The Wassenaar Arrangement (WA): established in 1995, it affiliates 40 states.

See Attachment 6 for a detailed listing of states participating in the respective control regimes.

The control regimes are primarily designed to enhance the transparency of listed-goods transfers and to promote the fundamental principles on which the regimes are based. Strong emphasis is placed on regular exchanges of information between the participating countries. The regimes constantly update the control lists, to keep up with technological progress, and seek to coordinate the controlling efforts of the participating states. Cooperation is based on national legislation and national export control systems. Key multilateral cooperation instruments include notification of export-license denials and of so-called “undercutting”, i.e. decisions to issue licenses for essentially identical transactions previously denied by other member states; such decisions should be preceded by consultations. The system of denial notifications operates within the NSG, AG, MTCR and the WA, while bilateral consultations are conducted in the framework of the NSG, MTCR and the AG. Polish policy on matters relating to the control of trade in arms and dual-use goods and technologies is congruent with EU policy. Poland is one of the most active participants in control regimes among the countries of Central-Eastern Europe and has developed broad-ranging cooperation with neighbors and allies regarding export controls. Building on its own experience, Poland intends to support countries in transition in their efforts to establish comprehensive export control systems. By supporting the development of the international system of export controls Poland contributes to the consolidation of international peace and security.

5. Subject of controls: goods of strategic significance

Pursuant to Article 3.3 of the Act, goods of strategic significance are dual-use goods and arms enumerated in the appropriate control lists. A list of dual-use items is an integral part of Council Regulation (EC) 428/2009 of 5 May 2009, while the EU military list is incorporated into the domestic legal system by way of Regulation of the Minister of Economy, prepared on the basis of control reference lists adopted by the Wassenaar Arrangement and European Union agencies.

The lists also include technologies essential for the production and maintenance of the final products and appropriate control-measuring devices. The list of dual-use goods contains over 2000 descriptions of various kinds of equipment, measuring devices, materials, technologies and software subject to international controls. The arms list includes 22 categories of weapons and auxiliary equipment.

Attachment 5 contains an abridged description of these categories. The listings are not closed and are updated annually by the competent implementing bodies of the nonproliferation accords.

Export controls also apply to services connected with the listed goods and technologies. No separate licensing is required for minimum technologies needed for the activation and basic use of the end product, if the technology was supplied together with the product on the basis of a valid export authorization.

6. Organization of export controls in Poland

In accordance with the Act, the Minister of Economy is the authority competent in matters of export controls. He implements those tasks through the Department of Export Controls of the Ministry of Economy, which prepares the relevant decisions on the licensing of trade in dual-use goods, arms and military equipment.

The export control authority issues trade permits after obtaining the opinions of the Minister of Foreign Affairs, the Minister of National Defense, the Minister of Interior, the Head of the Internal Security Agency, the Head of the Intelligence Agency, the Minister of Finances and the President of the State Atomic Agency- each of whom prepares his opinion independently, within the scope of his statutory competencies.

The authorities involved in the system of export controls communicate with each other using secure telecom channels. Units of the customs service are being gradually incorporated into the system. Also, the possibility of exporters submitting application online is being expanded.

The system of export controls outlined above is in effect a system for the monitoring of legal trade. The physical control of legal trade and prevention of illicit trade is the task of the customs service and special services.

Sanctions for illegal activity are an essential component of any export control system. In Poland the relevant penal and administrative sanctions are elaborated in Articles 33-42 of the Act. Penalties for offences connected with the proliferation of weapons of mass destruction, terrorist acts and violations of international embargos are laid down in the Penal Code.

7. International transparency of arms transfers

The idea of transparency of international commercial and non-commercial arms transfers started making headway in the mid-Eighties and is gradually gaining popularity. Its practical implementation consists in the exchange of information between states involved in international export controls on the elements of their systems: legislation, organization, procedures, licensing decisions and denials. An equally important addressee of the transparency campaign is each country's domestic arms industry, including producers, exporters, brokers, academic centers and research institutions.

Information on the legal and organizational aspects of national export control systems is usually available from the websites of the national export control authorities and institutions collaborating with them. The websites often include additional information links. It should be noted that the quality of the available data differs widely and some countries have not yet managed to launch their websites.

In Poland, topical information is primarily available from the websites of the Ministry of Economy (<http://www.mg.gov.pl/Gospodarka/DKE>) and the Ministry of Foreign Affairs (<http://www.msz.gov.pl/Polityka,bezpieczenstwa,1095.html>). Insufficient funding sometimes prevents regular updating of the websites and undermines their quality standards. As in other European countries, the foreign-language editions of the websites are significantly poorer than the national-language versions.

Annual reports and registers, worked out in multilateral diplomatic forums, constitute a key transparency instrument to which member states make their input within predetermined deadlines. These reports and registers differ in terms of the type of equipment covered and the character of the data included. There are three basic channels for the annual reports:

- The UN Register of Conventional Arms (<http://www.un.org/disarmament/convarms/HTML/RegisterIndex.shtml>) which concerns transfers of seven categories of arms (see tables 8 and 9) and transfers of small arms and light weapons (see tables 10 and 11)
- The OSCE Register of transfers of conventional arms and small arms and light weapons (SALW) – in practice it replicates data submitted to the UN. It also includes data on transfers of man-portable air-defense systems (MANPADS) and SALW transfers by air,
- The Annual Report as envisioned by Article 8.2 of the EU Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, published in the C series of the Official Journal of the European Union – it contains data on the number and value of issued licenses, actual exports (if available), denials and their basis. (<http://www.consilium.europa.eu/showPage.aspx?id=1484&lang=en>)

Transparency concerning export license denials is a separate topic. In that instance, transparency is limited to the exchange of classified information between states, without being made available to non-governmental entities. This arrangement has been adopted to protect the commercial interests of the parties involved in transactions.

International NGOs are playing an increasingly prominent role in the sphere of transparency of arms transfers. Meanwhile, the importance of transparency will keep rising in step with the growing number of tasks faced by government administrations. Also, it has been suggested that annual reporting is no longer sufficient and its frequency should be increased to six-month periods.

8. Arms exports

Polish arms exports comply with our country's international obligations and binding law. Any violation of these principles would be penalized. When issuing arms export permits the Polish administration takes into account the right of every state to self-defense – and to make arms purchases – enshrined in Article 51 of the UN Charter.

International reports involve different types of information and thus require the application of different methods for the acquisition and processing of the relevant data. The UN and OSCE registers also include non-commercial arms transfers made in the framework of international or inter-ministry bilateral and multilateral cooperation. Under Polish law some of these transfers do not require permits issued by the export control authority, which results in differences between data submitted to the EU and the UN. Also, the subject matter of the reports in both cases differs, so it is very difficult to compare them.

Furthermore, there is the unresolved technical problem of obtaining data on actual arms exports within a specific reporting period. This stems from the absence of customs clearance within the European Union, different customs and control list classifications of goods and the exemption from licensing of certain non-commercial transfers. It should also be pointed out that export permits are valid 12 months, which means that actual transfers of equipment might take place the year after the year of permit issuance. As a result, data from different sources, if not closely analyzed, might appear inconsistent. Poland is not the only country experiencing this problem. One way of addressing it would be to create a legal basis for the obtainment of data on actual exports directly from exporters. The relevant legislative works are under way.

Due to the above factors each table below will be accompanied by brief notes explaining how the data presented has been compiled.

9. Quantitative data

9.1. General export data

Table 1 presents data on the number and value of permits and denials for the export of arms and military equipment according to 22 categories of the military list, issued over the past 4 years to state and private companies. It does not include data on non-commercial transfers and transfers connected with participation in UN, EU and NATO peace missions. The data refer only to “new transfers”, i.e. they do not include transfers connected with warranty repairs, exhibitions, tests, and repairs abroad of equipment at the disposal of Polish units.

A single license may signify more than one category indicated in the military list.

The value of licenses is expressed in EUR. The bottom line of the table containing information on denial criteria refers to Common Position 2008/944/CFSP (Annex 2), and before its entry into force to the criteria of the EU Code of Conduct on arms exports.

Table 1. Total Polish arms exports in the years 2006-2009

	2006	2007	2008	2009
Number of licenses	284	322	345	460
Total value of licenses	275 337 570	286 725 685	368 077 372	1 391 156 932
Actual exports	Not available	Not available	Not available	Not available
Number of notified denials	3	1	2	0
Denial criteria	2, 3, 7	2, 7	2, 4, 7	

It is noteworthy that the value of Polish arms exports has been rising steadily, though their volume still is not fully satisfactory. As will be demonstrated in other tables, the surge in exports in 2009 was connected with substantial cooperative exports by companies that cooperate with US and Canadian manufacturers or are their subsidiaries.

The growing number of licenses implies an increased workload on the export control administration, which, however, has coincided with staffing reductions. The number of decisions issued each year substantially exceeds 1200 when one also takes into account applications that are not “new transfers” and those that concern dual-use items.

Table 2 presents the arms exports of the EU Member States, including Poland, in the years 2007-2008. The relevant data for 2009 was not available when the instant report was being compiled.

Table 3 contains comparative data on the number of export denials issued by EU Member States over the past two years.

**Table 2. Exports of arms and military equipment from EU states in the years 2007-2008
(in thousands of EUR)**

No.	State	2007			2008		
		A	B	C	A	B	C
1.	Austria	2 118	1 378 665	124 368	1 850	946 336	201 331
2.	Belgium	1 035	899 780	n. a.	1 202	1 334 913	n. a.
3.	Bulgaria	454	377 918	147 759	438	475 463	149 634
4.	Cyprus	7	86	86	4	1 545	1 545
5.	Denmark	276	195 577	n. a.	337	163 250	n. a.
6.	Estonia	27	2 997	3 465	23	6 225	5 519
7.	Finland	206	56 579	74 744	240	337 284	93 257
8.	France	5 984	9 849 112	4 517 592	6 159	10 557 932	3 141 036
9.	Greece	58	33 268	33 268	62	47 804	47 796
10.	Spain	723	1 961 820	933 668	693	2 526 415	934 451
11.	Holland	925	717 035	873 708	1 054	1 257 675	499 533
12.	Ireland	67	32 668	23 019	92	30 690	12 518
13.	Lithuania	58	63 263	43 502	39	46 599	31 450
14.	Luxembourg	-	-	-	-	-	-
15.	Latvia	24	764	n. a.	17	644	644
16.	Malta	7	611	611	9	3 223	3 223
17.	Germany	16 509	3 367 684	1 032 083	16 054	5 788 261	n. a.
18.	Poland	322	286 726	n. a.	345	368 077	n. a.
19.	Portugal	1 021	26 835	n. a.	1 311	75 986	71 428
20.	Czech Republic	961	477 874	175 465	1 044	212 294	189 615
21.	Romania	699	123 266	61 166	589	118 804	82 997
22.	Slovakia	206	74 105	36 957	186	71 307	37 999
23.	Slovenia	48	4 509	2 888	54	5 257	5 977
24.	Sweden	654	717 041	1 010 290	685	877 337	1 158 875
25.	Hungary	252	95 689	16 520	261	118 845	14 835
26.	Great Britain	17 347	1 312 186	n. a.	10 417	2 466 096	n. a.
27.	Italy	1 027	4 743 682	1 267 406	1 469	5 661 124	1 777 455
EU total		51 015	27 099 742	10 378 566	44 634	33 499 384	8 461 120

A – number of export licenses issued
B – value of exports in accordance with licenses issued
C – actual value of exports
n. a. – not available

Note: the actual value of exports may differ from the value according to the licenses issued due to incomplete utilization of the licenses or the implementation of contracts for which licenses were issued in previous years.

Table 3. Numbers of export denials issued by EU Member States in the years 2008-2009

No.	State	2008	2009
1.	Austria	10	12
2.	Belgium	7	5
3.	Bulgaria	2	6
4.	Cyprus	2	0
5.	Denmark	1	0
6.	Estonia	0	0
7.	Finland	1	1
8.	France	66	79
9.	Greece	0	3
10.	Spain	0	0
11.	Holland	5	18
12.	Ireland	0	0
13.	Lithuania	2	2
14.	Luxembourg	0	0
15.	Latvia	2	2
16.	Malta	1	1
17.	Germany	113	189
18.	Poland	2	0
19.	Portugal	3	0
20.	Czech Republic	10	9
21.	Romania	0	2
22.	Slovakia	0	0
23.	Slovenia	0	0
24.	Sweden	5	2
25.	Hungary	1	0
26.	Great Britain	72	78
27.	Italy	11	10

Tables 4 and 5 contain a regional presentation of data on the exports of the main categories of equipment for the years 2008-2009, compiled pursuant to the methodology described above. Tables 6 and 7 present data on the main importers of Polish arms.

Table 4. Exports of arms and military equipment from Poland in 2008 according to regions

Region	Number of licenses issued	Value of licenses in EUR	Value of licenses – percentage	Principal categories of equipment according to military list
South-East Asia	38	230 980 648	62,7	6, 14, 10, 13, 17
North America	71	57 488 610	15,6	10, 6
Middle East	35	29 101 421	7,9	3, 1
South Asia	111	20 476 335	5,6	10, 6, 3
European Union	57	14 859 328	4,0	6, 3, 10
North Africa	6	8 541 368	2,3	10
Other European states	15	5 778 604	1,6	6, 7
North-East Asia	2	457 506	0,1	5, 6
South America	7	192 851	0,05	10
Central America and the Caribbean	3	182 701	0,05	10
Central Asia	-	-	-	-
Oceania	-	-	-	-
Sub-Saharan Africa	-	-	-	-
Total	345	368 077 372		

Table 5. Exports of arms and military equipment from Poland in 2009 according to regions

Region	Number of licenses issued	Value of licenses issued in EUR	Value of licenses issued – percentages	Principal categories of equipment according to military list
North America	109	1 170 616 537	84,1	10, 16, 6, 22, 18, 1
South-East Asia	43	111 681 239	8,0	6, 4, 14, 5
North Africa	10	40 857 783	2,9	10
European Union	110	26 323 987	1,9	13, 3, 5, 11
South Asia	117	23 278 023	1,7	6, 1, 10, 11
South America	13	7 118 933	0,5	4, 10
Middle East	38	7 054 040	0,5	1, 8, 6
Other European states	17	3 584 997	0,3	13, 6
North-East Asia	2	631 795	0,04	5, 6
Central America and the Caribbean	1	9 598	-	10
Central Asia	-	-		
Oceania	-	-		
Sub-Saharan Africa	-	-		
Total	460	1 391 156 932		

As noted above, the substantial growth in exports to the US and Canada was the result of cooperative affiliations between producers in the aviation and land-vehicle components sectors.

**Table 6. Main importers from Poland according to value of licenses
2008**

No.	State	Number of licenses issued	Value of licenses in EUR	Military list category
1	Malaysia	25	224 867 068	6, 14
2	USA	47	34 680 913	10
3	Canada	24	22 807 697	10, 6
4	Lebanon	4	18 719 944	3
5	India	96	17 155 320	6, 10
6	Algeria	6	8 541 368	1
7	Israel	6	7 008 296	10
8	Indonesia	10	5 012 674	10, 2
9	Finland	4	4 864 046	6

**Table 7. Main importers from Poland according to value of licenses
2009**

No.	State	Number of licenses issued	Value of licenses in EUR	Military list category
1	USA	58	1 130 248 279	10, 16, 18
2	Malaysia	28	82 020 675	6, 14
3	Canada	51	40 368 258	10, 6
4	Algeria	7	38 827 115	10
5	Indonesia	8	22 650 400	4, 5
6	India	93	21 595 346	6, 1, 11, 10
7	Denmark	14	7 502 889	13
8	Peru	13	7 118 933	4, 10
9	Israel	6	4 008 423	1, 8

Poland should be concerned about the relatively low position of India, which used to be a leading partner of the Polish arms industry, and about the future of sales to South-East Asia after completion of the ongoing contract for the delivery of tanks to Malaysia.

The negligible volume of exports to European Union countries is striking and raises questions about the competitiveness of the Polish arms industry in the framework of a single defense-products market under the planned defense directive.

Table 8 compiles data on the activity of Polish companies in the sphere of arms brokering in 2009, based on data concerning issued broker permits.

Table 8. Arms brokering permits issued in 2009

Destination country	No. of licenses	Value according to licenses	Arms Register category	No. of items	Country of origin
IRAQ	2	6 379 900 EUR	6	37	UKRAINE
IRAQ	1	117 145 EUR	6	1173	UKRAINE
EGYPT	2	154 429 EUR	5	695	SURINAM
EGYPT	1	50 500 EUR	2	3977	BULGARIA
EGYPT	1	15 300 EUR	4	10 000	BULGARIA
EGYPT	1	219 940 EUR	3	5 800	BULGARIA
INDIA	1	106 931 EUR	6	110	UKRAINE
SLOVENIA	2	33 935 EUR	13	85	FRANCE

9.2. Combat equipment transfer data

Tables 9 and 10 present data on actual exports and transfers of equipment covered by the seven categories of the UN register, compiled on the basis of data supplied by the Ministry of National Defense and the Ministry of Finances (customs service).

Table 9. Polish arms exports in 2008 according to the categories of the UN Register of Conventional Arms

Category	Importer country	Number of items	Product description	Notes
I. Battle tanks	Finland	1	T-55	Museum exhibit
	Malaysia	21	PT-91M	Ministry of Defense
II. Armored combat vehicles	Iraq	44	„Dzik”	In compliance with UN SC resolution 1546 (2004)
	Finland	5	„Rosomak”	Modification and re-export to the UAE
III. Large-caliber artillery systems	-	-		
IV. Combat aircraft	-	-		
V. Attack helicopters	-	-		
VI. Warships	-	-		
VII. Missiles and missile launchers	-	-		

Table 10. Polish arms exports in 2009 according to the categories of the UN Register of Conventional Arms

Category		Importer country	Number of items	Product description	Notes
I.	Battle tanks	Czech Republic	54	T-72	For spare parts
		Malaysia	18	T-91M	Ministry of Defense
II.	Armored combat vehicles	-	-		
III.	Large-caliber artillery systems	-	-		
IV.	Combat aircraft	-	-		
V.	Attack helicopters	-	-		
VI.	Warships	-	-		
VII.	Missiles and missile launchers	Indonesia	81 missiles with 4 launchers	GROM missiles and POPRAD launchers	Ministry of Defense

9.3. Exports and transfers of small arms and light weapons

Tables 11 and 12 present data on commercial and non-commercial actual transfers of small arms and light weapons compiled on the basis of information received from the Ministry of National Defense, Ministry of Finances and Ministry of Economy.

Table 11, part 1. Exports of small arms in 2008

SMALL ARMS		Destination country	Number of items	Type	Notes
1.	Revolvers and self-loading pistols	Israel	2500	Glock 17, 19, 26 pistols	Internal market
		USA	102	7.62 mm TT-33	Internal market
		Lebanon	11200	9 mm P-64	Ministry of Defense
2.	Rifles and carbines	Lebanon	1000	9 mm P-64	Ministry of Defense
		Austria	40	Sniper rifle 7.62mm SVD	Internal market
		Lebanon	2000	7.62 mm AKM	Ministry of Defense
3.	Sub-machine guns	USA	7000	7.62 AKMS	Internal market
		USA	151	7.62 AK-47	Internal market
		Czech Republic	100	PPS wz. 43	Internal market and for collector purposes
4.	Assault rifles	Czech Republic	25	9mm PM-63	"
		UK	200	PPS wz. 43	"
		Austria	2000	PPS wz. 43	Internal market
		Austria	200	9mm PM-63	"
5.	Light machine guns	Germany	120	5.45mm Tantal	Collector purposes
5.	Light machine guns	Czech Republic	40	7.62 mm DP wz. 27	Collector and museum purposes
		UK	100	7.62 mm Degtarev	"
		Austria	100	7.62 mm DP wz. 27	Internal market
		USA	1150	"	Internal market

Table 11, part 2. Exports of light weapons in 2008

LIGHT WEAPONS		Destination co- untry	Number	Type	Notes
1.	Heavy machine guns	UK	5		ISAF, NATO
		USA	154		
			2		
		Afghanistan	225		
2.	Hand-held under- barrel and mounted grenade launchers	UK	20		ISAF, NATO
		USA	54		
3.	Portable anti-aircraft guns				
4.	Portable anti-tank guns				
5.	Recoilless rifles				
6.	Portable anti-tank missile launchers and rocket systems				
7.	Portable anti-aircraft missile launchers and missile systems				
8.	Mortars of caliber over 75 mm				

Table 12, part 1. Exports of small arms in 2009

SMALL ARMS		Destination country	Number of items	Type	Notes
1.	Revolvers and self-loading pistols	Israel	1658	P-64, P-83,TT	ISAF, NATO EUFOR / MINURCAT
		USA	6005		
		Austria	1000		
		Afghanistan	156		
		Chad	69		
2.	Rifles and carbines	Afghanistan	78	Tantal, m.88; 7,62 mm PPS, m. 43	ISAF, NATO, EUFOR / MINURCAT
		Chad	1		
		USA	1750 917 2000		
		Austria	4		
		Czech Republic	13		
3.	Sub-machine guns	Afghanistan	73		ISAF, NATO
4.	Assault rifles	Afghanistan	1629	AKMS -7,62x39mm	ISAF, NATO
		Chad	141		EUFOR / MINURCAT
		USA	1	5,56mm semi-automatic	
5.	Light machine guns	Afghanistan	14		ISAF, NATO

Table 12, part 2. Exports of light weapons in 2009

LIGHT WEAPONS		Destination country	Number	Type	Notes
1.	Heavy machine guns	Afghanistan	70		ISAF, NATO
2.	Hand-held under-barrel and mounted grenade launchers	Afghanistan	106		ISAF, NATO
3.	Portable anti-aircraft guns	Afghanistan	4		ISAF, NATO
4.	Portable anti-tank guns	Afghanistan	4		ISAF, NATO
5.	Recoilless rifles	Afghanistan	43		ISAF, NATO
6.	Portable anti-tank missile launchers and rocket systems				
7.	Portable anti-aircraft missile launchers and missile systems	Indonesia	12	Anti-aircraft systems ZUR –23mm	
8.	Mortars of caliber over 75 mm	Afghanistan	12		ISAF, NATO

10. Promotion of arms exports

Exports of military equipment by their very nature impact international relations and thus constitute an important element of foreign policy. Polish arms are usually delivered to government ministries and agencies, so cooperation in this sphere is seen as affirmation of good political relations, based on mutual confidence and community of security interests. The government administration, including the MFA, focuses on official contacts. The Polish arms industry offer can be best promoted through high-level official meetings and the activity of diplomatic missions, directly reaching officials responsible for their countries' defense procurement policies. Support for the arms industry also extends to manufacturing and research cooperation. Furthermore, the Government protects the arms industry's interests within international organizations or political accords concerned with arms trade.

Arms export promotion is planned and implemented in compliance with Poland's legal and political commitments. The main goal is to enhance Poland's image as producer of modern equipment and a credible partner, adhering to its international export control obligations.

Promotional activity by the government administration, including diplomatic posts, complements the strictly commercial marketing efforts by the producers themselves. As concerns the MFA, such activity includes:

- co-initiation of and political support for international cooperation projects in the sphere of arms industry production, procurement, and research;
- initiation of international visits in support of commercial contacts;
- analysis of internal factors impacting the perception of the Polish arms offer;
- participation in institutional forms of bilateral cooperation (working groups/commissions);
- protection of the interests of the Polish arms industry in international forums;
- participation in meetings and conference held in the framework of arms industry fairs.

The broad network of Polish diplomatic posts offers a good base for promotional activity. The tasks handled by Polish diplomats include:

- analysis of local markets;
- promotion of specific projects;
- protocol and media support for promotional events;
- participation in exhibitions and fairs;
- assessment of the effectiveness of Polish companies;
- formulation of proposals designed to boost the effectiveness of promotion.

The world crisis, which led to defense spending cuts in Poland, has highlighted the importance of boosting exports. The relevant efforts are primarily made by the producers themselves, though the

Ministry of Foreign Affairs (and other government departments) are also involved in efforts to promote the Polish arms industry in world markets.

Poland's credibility as a member of the international system of export controls enhances the reputation of Polish producers of arms and military equipment. Only the maintenance of top export control standards guarantees their participation in the most advanced forms of cooperation and access to modern technologies. Upholding these standards is the consistent goal of the Polish government administration and arms industry.

LAW
of 29 November 2000
on foreign trade in goods, technologies and services of strategic importance
to the security of the State and to maintaining international peace and security

Chapter 1
General provisions

Article 1. This Law sets forth the rules of foreign trade in goods, technologies and services of strategic importance to the security of the State and to maintaining international peace and security, the rules of control and records of this trade, as well as the liability in the case of illegal trade of these goods, technologies and services.

Article 1a. This Law shall be used as the basis for implementation of provisions of Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology (Official Journal of the European Communities L 159 of 30 June 2000), as last amended by Council Regulation (EC) No 149/2003 (Official Journal of the European Union L 30 of 5 February 2003).

Article 2. Foreign trade referred to in Article 3 (8) below shall be forbidden by law unless relevant conditions and restrictions set forth in Council Regulation (EC) No 1334/2000, herein, in other Laws, as well as in agreements and other international commitments are satisfied.

Article 3. Definitions of terms:

- 1) dual-use items – dual-use items within the meaning of Article 2 (a) of Council Regulation (EC) No 1334/2000;
- 2) military goods – weapons, ammunition, explosives, products, their components or technologies specified in the list referred to in Article 6 (5) hereof;
- 3) items of strategic importance to the security of the State and to maintaining international peace and security, hereinafter referred to as the “items of strategic importance” – dual-use items and military goods;
- 4a) the Community Customs Code – Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (Official Journal of the European Communities L 302 of 19 October 1992), as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (Official Journal of the European Union L 236 of 23 September 2003);
- 4b) the customs territory of the Community – the customs territory within the meaning of Article 3 of the Community Customs Code;
- 4c) third country – any country outside the customs territory of the Community;
- 5) export – export within the meaning of Article 2 (b) of Council Regulation (EC) No 1334/2000;
- 5a) brokering service – activities taken up by natural or legal persons and consisting in:
 - a) negotiating, business consulting, and assistance in conclusion of contracts, as well as any form of participation in activities related to export, import, transit or conclusion of any lease, donation, loan, or bailment agreement, as well to any contributions in kind, which may in particular refer to the transfer of items of strategic importance from one country to another,
 - b) purchase, sale or organisation of any transfer, and in particular forwarding, of items of strategic importance from one country to another;
- 5b) technical assistance – any form of technical support related to repairs, development, production, testing, maintenance, or any other technical services related to items of strategic importance, also in the form of instructions, training, transfer of working knowledge or consulting services;

- 6) import:
 - a) entry of items of strategic importance into the territory of the Republic of Poland;
 - b) transfer of any software or any type of scientific information or technical documentation, as well as documentation referring to technologies used in the production of items referred to in sections 1 and 2 above, from any third country into the territory of the Republic of Poland by means of electronic media, fax or telephone, if effects of such transfer are comparable to effects of direct access to this information or documentation, and if such software or information transferred by means of electronic media, fax or telephone may be confirmed by a relevant document;
- 7) transit – the procedure of transit as defined in Article 91 of the Community Customs Code;
- 8) trade:
 - a) export,
 - b) brokering services,
 - c) technical assistance,
 - d) import,
 - e) transit;
- 9) trade control authority – competent Minister of Economy;
- 10) advisory authorities – competent Minister of Foreign Affairs, Minister of National Defence, competent Minister of the Interior, Head of the Internal Security Agency, Head of the Foreign Intelligence Agency, competent Minister of Public Finance, and President of the National Atomic Energy Agency;
- 11) import monitoring authority – Head of the Internal Security Agency.

Article 4. Import into the territory of the Republic of Poland, export from the territory of the Republic of Poland as well as transit through the territory of the Republic of Poland of weapons and ammunition by natural persons for purposes other than commercial and industrial shall be subject to separate provisions.

Article 5. For matters provided for herein, provisions of the Code of Administrative Procedure shall apply, unless otherwise provided for in the Law.

Chapter 2

Authorisations for trade in items of strategic importance

Article 6.

1. Trade in dual-use items may only be carried out based on an export authorisation, an authorisation to provide brokering services, or an authorisation to provide technical assistance, and shall be within the scope defined in such authorisation.
2. Trade in military goods may only be carried out based on an export, import or transit authorisation, an authorisation to provide brokering services, or an authorisation to provide technical assistance, and shall be within the scope defined in such authorisation.
3. No authorisation shall be required for import of dual-use items into the territory of the Republic of Poland.
4. Lists of dual-use items requiring a relevant trade authorisation are provided for in Council Regulation (EC) No 1334/2000.
5. In consultation with the competent Minister of Foreign Affairs and Minister of National Defence, based on the opinion of the Head of the Internal Security Agency and the Head of the Foreign Intelligence Agency, the competent Minister of Economy shall adopt an Ordinance to specify the list of military goods to be traded based on a relevant authorisation, taking into account international lists.
6. The Council of Ministers shall adopt an Ordinance specifying a list of countries where items of strategic importance shall not be exported or their export shall be limited, taking into account:
 - 1) defence or security requirements of the Republic of Poland;
 - 2) commitments of the Republic of Poland arising from international agreements and arrangements, as well as alliance commitments, including those referring to non-proliferation and control of items of strategic importance.

7. Any natural or legal person shall apply for an export authorisation to export goods not included in the lists referred to in paragraphs 4 and 5 above if such person knows or has been informed that the items in question are or may be intended, in their entirety or in part, for purposes or in circumstances referred to in Article 10 (1).

Article 7.

1. For the export of dual-use items, provision of brokering services, and provision of technical assistance related to dual-use items, individual, general, or global authorisations shall be issued, as defined in Council Regulation (EC) No 1334/2000.
2. For the export, import, and transit of military goods, an individual authorisation shall be required, subject to provisions of paragraph 3.
3. The competent Minister of Economy may adopt an Ordinance specifying a list of spare parts of military goods whose export shall be subject to global authorisations, taking into account the volumes and directions of supplies.
4. For the provision of brokering services and technical assistance related to military goods, individual, general or global authorisations shall be issued.

Article 8.

1. General authorisations shall be issued in the form of an Ordinance by the competent Minister of Economy.
2. General authorisations may be used by any natural or legal person who is able to provide relevant documentation to confirm the use of the internal system of trade control and management referred to in Article 10 (2) below for the past 3 years, and who submits a statement to the trade control authority defining the intention and starting date of intended trade in items and services referred to in Article 7 (1) listed in the general authorisation.
3. The Ordinance referred to in paragraph 1 above issued by the competent Minister of Economy shall define in particular:
 - 1) a country or countries covered by the general authorisation;
 - 2) an item or items covered by the general authorisation;
 - 3) detailed conditions of trade in these items.
4. The Community general export authorisation presented in Annex II to Council Regulation (EC) No 1334/2000 may be used by any natural or legal person satisfying conditions set forth in paragraph 2 above.

Article 9.

1. Individual or global authorisations shall be issued following an application by any natural or legal person.
2. The trade control authority shall be the competent authority to issue individual or global authorisations.
3. An application for an individual or global authorisation should specify:
 - 1) the name of the natural or legal person, their registered office and address;
 - 2) the number of entry in the Register of Entrepreneurs as defined in the National Court Register Act of 20 August 1997 (Journal of Laws of 2001, No 17, item 209, as amended);
 - 3) the type and scope of business activity carried out by the natural or legal person;
 - 4) the exporter's or importer's name, their registered office and address;
 - 5) the name of the producer and end user, their registered offices and addresses;
 - 6) types of items of strategic importance, brokering services or technical assistance to be traded with foreign partners, their description, value and quantity;
 - 7) the intended use of items of strategic importance by the end user;
 - 8) a country of final destination;
 - 9) a statement of the natural or legal person with a commitment to take any action necessary to deliver items declared in the application to the end user, and to inform a foreign importer that any change of declared end-use of these items or any change of their end user requires a prior approval of the Polish trade control authority.
4. The following documents should be attached by the natural or legal person to the application for an individual or global authorisation for the trade in items of strategic importance:
 - 1) a statement confirming that there are no circumstances referred to in Article 10 (1);
 - 2) a copy of the concession to carry out trade in explosives, weapons and ammunition, as well as products

and technologies to be used for the military or police purposes, as defined in the Law of 22 June 2001 laying down the conditions of business activity related to production and trade in explosives, weapons and ammunition, as well as products and technologies to be used for the military or police purposes (Journal of Law No 67, item 679, as amended);

- 3) a draft trade agreement;
 - 4) a copy of the certificate referred to in Article 11 (4);
 - 5) an import certificate or end user statement (in the case of export).
5. A sworn translation into Polish is required for all documents drawn up in a foreign language.
6. The competent Minister of Economy shall adopt a relevant Ordinance to specify:
- 1) model forms of applications for an individual or global authorisation for the export of items of strategic importance, provision of brokering services and technical assistance, as well as for the import or transit of military goods,
 - 2) model forms of individual or global authorisations for the export, import or transit of military goods or their spare parts, as well as for the provision of brokering services and technical assistance related to items of strategic importance – with regard to the types of items and forms of trade.
7. Model forms of individual and global authorisations for the export of dual-use items are set out in Council Regulation (EC) No 1334/2000.

Article 10.

1. Before the application for an individual or global authorisation is filed, the applicant (a natural or legal person) shall in particular determine whether:
 - 1) the end user intends to use military goods to violate or repress human rights and fundamental freedoms;
 - 2) the delivery of military goods poses any threat to peace or may otherwise cause destabilisation in the region;
 - 3) the country of final destination supports, facilitates or encourages terrorism or international crime;
 - 4) military goods may be used for any other purpose than to satisfy justified requirements of defence and security in the country of destination.
2. To meet the obligation referred to in paragraph 1 above, a natural or legal person shall establish and implement an internal system of control and management of trade related to items of strategic importance, hereinafter referred to as the “internal control system”.
3. If, despite due diligence, a natural or legal person is unable to determine whether circumstances referred to in paragraph 1 above apply in this particular case, such natural or legal person may ask the trade control authority to provide a binding interpretation required for this case. The trade control authority shall provide such binding interpretation within 3 months after a relevant application is submitted. In justified cases this period may be extended to 6 months.

Article 11.

1. The internal control system shall in particular define tasks of individual authorities in the organisation, job descriptions as regards basic tasks related to control and management of trade, the framework of co-operation between the natural or legal person²³ and the state administration in this area, as well as rules and procedures of employee recruitment, data archiving, training, internal controls, and completion of orders.
2. The internal control system shall be certified for conformity with the requirements of international standards within the ISO 9000 series and provisions set forth in paragraph 1 above.
3. The certification referred to in paragraph 2 above shall be carried out by authorised control bodies accredited in the Polish accreditation system established pursuant to provisions of the Law of 28 April 2000 r. on the conformity assessment system and accreditation and amending certain acts (Journal of Laws No 43, item 489).
4. A certificate of conformity with requirements referred to in paragraph 1 above shall be issued by bodies referred to in paragraph 3 above.
5. The certificate referred to in paragraph 4 above shall be valid for the period of 3 years.
6. Within the period of validity of this certificate, authorised control bodies shall carry out at least 5 audits of conformity of the internal system of control and management of trade with requirements referred to in paragraphs 1 and 2 above.

7. The competent Minister of Economy shall adopt an Ordinance to determine a list of certification bodies authorised to carry out certification and audits of internal systems of control and management of trade. This list shall include selected bodies accredited in the Polish accreditation system.

Article 12.

1. Based on the opinion of advisory authorities, and having determined that all legal requirements have been satisfied, the trade control authority shall issue an individual or global authorisation.
2. Individual or global authorisations shall be issued in the form of a relevant administrative decision.
3. To formulate an opinion referred to in paragraph 1 above, advisory authorities shall have the right to require the natural or legal person to provide any information as may be deemed necessary to verify the data presented in the application for an individual or global authorisation.
4. Before the decision to issue an individual or global authorisation is made, the trade control authority shall:
 - 1) request the natural or legal person to complete the application or provide missing documentation to confirm that legal requirements for trade in items of strategic importance have been satisfied; the natural or legal person shall be requested to complete such documentation by a set date;
 - 2) have the right to verify the data provided in the application by the natural or legal person.
5. Provisions of Article 29 (4) and Article 30 (1) and (2), respectively, shall apply for the control referred to in paragraph 4 subparagraph 2 above.
6. The natural or legal person shall notify the trade control authority of any changes of data presented in the application within 14 days after such changes occur.

Article 13. If the natural or legal person knows or has reasonable grounds to assume that items of strategic importance were used or may be intended for use, in their entirety or in part, for purposes or in circumstances referred to in Article 10 (1), the natural or legal person shall take any action necessary to determine the actual use of these items and shall notify the trade control authority thereof.

Article 14.

1. Individual or global authorisations and rights resulting therefrom shall be non-transferable.
2. Individual or global authorisations for the trade in items of strategic importance shall be considered as documents of relevance to customs control.
3. An original copy of the individual or global authorisation shall be attached to the customs declaration or application for the customs-approved treatment or use of goods.
4. For an individual or global authorisation for trade to be issued, compliance with additional requirements and conditions specified by the competent Minister of Economy may be required, and in particular submission of a statement by the foreign end user confirming the use of items of strategic importance, or submission of an international import certificate.
5. The validity period of an individual or global authorisation shall be defined therein; this period shall not be longer than 1 year.
6. Individual or global authorisations shall be issued free of charge.

Article 15.

1. Authorisations for trade shall be refused by the trade control authority, in the form of a relevant administrative decision, if:
 - 1) such refusal is required to guarantee defence or security of the Republic of Poland;
 - 2) such refusal is required by commitments of the Republic of Poland arising from international agreements and arrangements, as well as alliance commitments, including those referring to non-proliferation and control of items of strategic importance;
 - 3) the natural or legal person fails to guarantee that trade is carried out in conformity with the law.
2. Authorisations for trade in items of strategic importance shall be refused by the trade control authority, in the form of a relevant administrative decision, if these items may be intended, in their entirety or in part, for illegal purposes or contrary to the interests of the Republic of Poland, i.e. for the development, production, operation, handling, maintenance, storage, detection, identification or dissemination of weapons of mass destruction, and in particular of chemical, biological or nuclear weapons, or the development, production, maintenance, or storage of missiles capable of delivering such weapons.

Article 16. Individual or global authorisations shall be refused by the trade control authority, in the form of a relevant administrative decision, if:

- 1) there is a risk of change of the end-use or place of destination of items of strategic importance;
- 2) the natural or legal person is in breach of regulations referring to trade in items of strategic importance.

Article 17.

1. Based on the opinion of advisory authorities, the trade control authority may withdraw or change an individual or global authorisation, in the form of a relevant administrative decision, if:
 - 1) such withdrawal or change is required to guarantee defence or security of the Republic of Poland;
 - 2) such withdrawal or change is required by commitments of the Republic of Poland arising from international agreements and arrangements, as well as alliance commitments, including those referring to non-proliferation and control of items of strategic importance;
 - 3) there is a risk of change of the end-use or place of destination of items of strategic importance;
 - 4) the natural or legal person is in breach of terms and conditions specified in the authorisation;
 - 5) the natural or legal person cannot provide a guarantee that trade is carried out in conformity with the law (the guarantee was lost for reasons attributable to this natural or legal person).
2. No compensation shall be claimed in the case of withdrawal or change of an individual or global authorisation for reasons attributable to the natural or legal person.

Article 18. Any natural or legal person whose individual or global authorisation has been withdrawn for reasons referred to in Article 17 (1) subparagraph 4 above may submit another application for the authorisation, but not sooner than after 3 years following the date when the decision to withdraw the authorisation came into force.

Article 19.

1. Transit of foreign dual-use items with a final destination outside the territory of the Republic of Poland shall require a permit issued by the head of the Polish border customs office.
2. The permit referred to in paragraph 1 shall be issued at the request of the carrier.
3. In consultation with the competent Minister of Economy, the competent Minister of Public Finance shall adopt an Ordinance to define a model form of the application referred to in paragraph 2 above, as well as a model form of a permit for the transit of dual-use items.
4. In particular, the application and permit model forms referred to in paragraph 3 above shall specify the following data: the number of the export licence, the country of origin of the items, the name of the carrier, the consignment note number, the name and address of the exporter, the name and address of the consignee, the name and full description of items or technologies, the control number, the quantity and value, the name of the border crossing point of entry into the territory of the Republic of Poland, a statement of the carrier confirming that the items subject to international control are to be transported through the territory of the Republic of Poland based on the export licence from the exporter's country to the indicated consignee in the same condition as at the point of entry into the territory of the Republic of Poland.

Article 20.

1. Export, import or transit of items of strategic importance may be carried out only in designated customs offices.
2. In consultation with the competent Minister of Economy, the competent Minister of Public Finance shall adopt an Ordinance to specify customs offices referred to in paragraph 1 above, with the view to ensuring appropriate controls of export, import, and transit of items of strategic importance.

Article 21.

1. A register of individual or global authorisations issued as well as natural or legal persons who satisfied the requirements specified in Article 8 (2) shall be compiled, hereinafter referred to as "the Register".
2. The Register shall be kept by the trade control authority.
3. An individual or global authorisation shall be entered in the Register immediately after it is issued. A natural or legal person shall be entered in the Register immediately after a statement referred to in Article 8 (2) is submitted by this person.

4. The competent Minister of Economy shall adopt an Ordinance to determine the procedure of keeping the Register, in particular taking into consideration the type of authorisations issued as well as the quantity and value of items of strategic importance covered by the authorisation.

Chapter 2a

Monitoring of the import of dual-use items used in telecommunications or for information security

Article 21a.

1. Import of dual-use items defined in paragraph 2, used in telecommunications or for information security, into the territory of the Republic of Poland, shall be monitored by the import monitoring authority pursuant to provisions of this Chapter.
2. A list of dual-use items is presented in Part 1: "Telecommunications" 5A001a and 5A001b4, and in Part 2: "Information security" of category 5 in Annex I to Council Regulation (EC) No 149/2003 amending and updating Council Regulation (EC) No 1334/2000.

Article 21b.

1. A natural or legal person may import dual-use items specified in the list referred to Article 21a (2) upon a written notification submitted to the import monitoring authority, declaring the intended import of these items into the territory of the Republic of Poland.
2. The notification referred to in paragraph 1 above shall be submitted to the import monitoring authority not later than within 14 days prior to the intended date of import.

Article 21c.

1. The notification of intended import, referred to in Article 21b (1) shall specify the following data:
 - 1) the name of the natural or legal person, their registered office or address;
 - 2) the importer's name, its registered office and address;
 - 3) the name of the producer and end user, their registered offices and addresses;
 - 4) the designation of items to be imported, their description, quantity and value;
 - 5) the intended use of items by the end user;
 - 6) the country of final destination;
 - 7) a statement of the natural or legal person with a commitment to take any action necessary to deliver declared items to the end user.
2. The natural or legal person shall notify the import monitoring authority of any changes of data referred to in paragraph 1 above, within 14 days after such changes occur.
3. In the case of import of items and technologies related to security of confidential information, a copy of the concession to carry out trade in products and technologies to be used for the military or police purposes, as defined in the Act of 22 June 2001 laying down the conditions of business activity related to production and trade in explosives, weapons and ammunition as well as products and technologies to be used for the military or police purposes shall be attached to the notification referred to in paragraph 2 above (if required).
4. If completion of missing data in the notification is required, the applicant is requested by the import monitoring authority to complete the missing data within 7 days after such request is received.
5. The period referred to in paragraph 4 above may be prolonged at the applicant's request, provided that such request is justified and submitted before the expiry of this period.
6. If the missing data in the notification is not completed by the set date, the notification shall not be accepted.
7. A sworn translation into Polish is required for all documents drawn up in a foreign language.
8. The Prime Minister shall adopt an Ordinance to specify the model form of the notification of intended import of dual-use items, taking into account the type of items to be imported.

Article 21d. The import monitoring authority shall notify the Head of the Foreign Intelligence Agency of any import of cryptographic equipment, specifying the importer data and types of the imported equipment.

Chapter 3

Import certificate and end user statement

Article 22.

1. If required by competent authorities in the country of the foreign exporter, the trade control authority, at the request of the natural or legal person, may issue an import certificate or confirm an end user statement.
2. Provisions of Article 9 (3) to (5) shall apply for the application for an import certificate or confirmation of an end user statement.
3. The import certificate and end user statement are documents to be presented to relevant authorities outside the territory of the Republic of Poland and shall confirm reliability of the importer and control of transactions related to import of items of strategic importance into the territory of the Republic of Poland by competent authorities of the Republic of Poland.
6. The trade control authority may refuse to issue an import certificate or confirm an end user statement, if facts referred to in paragraph 3 above cannot be confirmed because there is no guarantee that trade in items of strategic importance is carried out in conformity with the law, or because the internal control system has not been implemented by the natural or legal person.
7. The competent Minister of Economy shall adopt a relevant Ordinance to specify the model form of an import certificate.
8. In particular, the import certificate referred to in paragraph 7 above shall specify the following data: the importer's name, the exporter's name, their registered offices and addresses, the name and description of items of strategic importance, the control number, the quantity and value, the description of end-use of items of strategic importance, as well as a statement that the importer:
 - 1) has undertaken to import items declared in the certificate into the territory of the Republic of Poland¹⁴ and immediately notify the trade control authority of any changes in terms and conditions of the contract;
 - 2) has declared to be aware that reexport, any change of the declared end-use of these items or any change of their end user requires a prior approval of the trade control authority;
 - 3) has agreed with the end user to enable the control of conformity of use of these items with provisions of the export authorisation, to be carried out by the Polish trade control authority with participation of the officials of exporter's country (if required) in the place of their use, in the entire period when these items remain in the territory of the Republic of Poland.

Article 23.

1. In the case of export of items of strategic importance, the trade control authority shall require the natural or legal person to submit an import certificate or end user statement confirmed by competent authorities in the country of the foreign exporter.
2. An end user statement shall be issued by a foreign end user and shall contain information required by the trade control authority.
3. The statement referred to in paragraph 2 above shall also be confirmed by the foreign importer and competent authorities in the country of final destination.
4. In particular, the statement referred to in paragraph 2 above shall specify the following data:
 - 1) the country of final destination;
 - 2) the name and address of the foreign end user;
 - 3) the designation of items of strategic importance, their description, quantity and value;
 - 4) the description of the end-use of items of strategic importance;
 - 5) intermediate customers and buyers;
 - 6) a statement confirming that items of strategic importance are not to be transferred to any other consignee without prior approval of the trade control authority.

Article 24.

1. Any natural or legal person who received an import certificate shall, within 30 days after items of strategic importance are released, apply to the head of the customs office in the end user location for the issue of a delivery verification certificate confirming that items covered by this certificate were actually brought into the territory of the Republic of Poland by the natural or legal person and were imported in compliance with the law.

2. Issue of a delivery verification certificate shall be subject to provisions of section VII of the Code of Administrative Procedure.
3. A natural or legal person shall return any costs incurred by the customs office in the course of proceedings related to the issue of a delivery verification certificate.
4. In consultation with the competent Minister of Public Finance, the competent Minister of Economy shall adopt an Ordinance to define the model form of the delivery verification certificate and methods of recording such certificates.
5. In particular, the delivery verification certificate shall specify the following data: the importer's name, the exporter's name, their registered offices and addresses, the name and description of items or technologies, the control number, the quantity and value, the description of the end-use of items or technologies, SAD number, the number of the consignment note, bill of lading or any other document confirming the import of items or technologies, as well as a statement that the importer provided reliable documentation to confirm that the delivery has been completed and that items or technologies covered by this certificate were brought into the territory of the Republic of Poland in compliance with the law.
6. In the case of export of items of strategic importance, the trade control authority may require the natural or legal person to submit the delivery verification certificate issued by competent authorities in the importer's country.

Chapter 4

Records of trade in items of strategic importance and trade-related information

Article 25.

1. Any natural or legal person trading in items of strategic importance shall keep records of this trade.
2. The competent Minister of Economy shall adopt an Ordinance to specify the procedure of keeping trade records referred to in paragraph 1 above, in line with the requirements defined for the internal control system.

Article 26.

1. Any natural or legal person pursuing trade based on general authorisations shall submit relevant information related to this trade to the trade control authority at least once in every 6 months.
2. The competent Minister of Economy shall adopt an Ordinance to define the scope of information referred to in paragraph 1 above, including in particular: the quantity and value of goods, the country of the trading partner, the importer's name, the exporter's name, their registered offices and addresses, intermediate consignees and buyers.

Article 27. At the request of advisory authorities, the trade control authority shall submit any information related to trade in items of strategic importance to these authorities.

Chapter 5

Trade control

Article 28.

1. Trade shall be subject to control.
2. In particular, this control includes:
 - 1) compliance of trade procedures with the respective authorisation, including verification of completed transactions;
 - 2) efficiency of the internal control system;
 - 3) accuracy of records referred to Article 25.
3. The control shall be carried out by the trade control authority in co-operation with authorities referred to in Article 29 (2);
4. The trade control authority may request another competent state control authority to carry out the trade control.

Article 29.

1. To carry out the control referred to in Article 28 (1), the trade control authority may set up a control team, hereinafter referred to as “the team”.
2. At the request of the competent Minister of Economy, the competent Minister of Foreign Affairs, Minister of National Defence, competent Minister of Public Finance, competent Minister of the Interior, Head of the Internal Security Agency, Head of the Foreign Intelligence Agency, and President of the National Atomic Energy Agency shall delegate officers, members of the Army or employees of respective subordinate or supervised organisational units to take part in the work carried out by the team. The competent Minister of Economy may also appoint experts upon their consent to join the team.
3. The trade control authority shall appoint the team leader whose responsibility is to co-ordinate all control tasks and draw up a relevant control report.
4. Control tasks shall be carried out based on the control authorisation issued by the trade control authority.
5. The competent Minister of Economy shall adopt a relevant Ordinance to specify the model form of the control authorisation. In particular, a control authorisation shall specify the following data: the person involved, the type and number of his/her ID, the authorisation expiry date, as well as a statement that the person subject to control shall provide required information and submit required documentation at the request of the holder of the control authorisation carrying out control tasks.

Article 30.

1. In particular, team members shall be entitled to:
 - 1) enter the property, building or facility, or their respective parts, where the person subject to control is pursuing its business activities, at the hour and on the day when these activities are or should be carried out;
 - 2) require oral or written clarification, documentation, or any other carriers of information, as well as access to data related to the subject of the control.
2. Control tasks shall be carried out in the presence of the person subject to control, his/her deputy, or employee, and if these persons are absent – in the presence of an appointed witness.
3. The team leader shall submit the control report to the trade control authority.

Article 31.

1. If any trade-related irregularities are identified, the natural or legal person²³ shall be requested by the trade control authority to ensure compliance with provisions of this Act within 1 month after such request is received.
2. After the period referred to in paragraph 1 above has expired and no action has been taken, the trade control authority shall withdraw an individual or global authorisation in the form of a relevant administrative decision. If the case concerns a general authorisation, the trade control authority shall issue an administrative decision whereby the natural or legal person is forbidden to use this authorisation. The trade control authority shall inform advisory authorities of such a decision.
3. In the case referred to in paragraph 2 above, the natural or legal person may be granted another individual or global authorisation or may use a general authorisation not sooner than after 3 years following the date when the decision to withdraw the individual or global authorisation or to forbid such person to use a general authorisation, came into force.

Article 32. For matters not provided for in this chapter, provisions of the Act of 28 September 1991 on fiscal control (Journal of Laws of 2004, No 8 item 65, as amended) referring to control procedures shall apply.

Chapter 6

Penal provisions and financial penalties

Article 33.

1. Any person pursuing trade without a relevant authorisation or contrary to conditions set forth in the authorisation, however unintentionally, shall be punished by imprisonment for a term of 1 year to 10 years.

2. If the person carrying out trade contrary to conditions set forth in the authorisation acts with no intent, and if this person takes actions referred to in Article 31 (1), this person shall be liable to a fine, restriction of liberty or imprisonment up to 2 years.
3. Any person committing the act referred to in paragraph 1 or 2 above shall be liable to the penalty referred to in paragraph 1 above.
4. If a person is convicted of the offence referred to in paragraphs 1-3 above, the court may issue a forfeiture order in respect of items of strategic importance or other items used or designated for use in order to commit an offence, or resulting either directly or indirectly from such offence, including cash and securities, even if these items are not the offender's property.

Article 34. Any person who does not satisfy obligations or requirements referred to in Article 24 (1) or Article 26 (1) shall be liable to a fine.

Article 35. Any person who obstructs the control procedures referred to in Article 28 (1) shall be liable to a fine.

Article 35a. Any person who does not satisfy the obligation referred to in Article 21c (2) shall be liable to a fine.

Article 36. Ruling in cases referred to in Articles 34, 25 and 35a shall be subject to provisions of the Law of 24 August 2001 – the Petty Offences Procedure Code (Journal of Laws No 106, item 1148, of 2003 No 109, item 1031, and No 213, item 2081, and of 2004 No 128, item 1351).

Article 37. Any legal person carrying out trade without a valid authorisation shall be liable to a financial penalty of up to PLN 200,000 imposed by the trade control authority by a relevant administrative decision.

Article 37a. Any natural or legal person importing dual-use items without submitting a notification of intended import to the import monitoring authority shall be liable to a financial penalty of up to PLN 100,000 imposed by the trade control authority by a relevant administrative decision.

Article 38. Any legal person carrying out trade contrary to conditions set forth in the authorisation shall be liable to a financial penalty of up to PLN 100,000 imposed by the trade control authority by a relevant administrative decision.

Article 39. Any legal person failing to satisfy obligations or requirements referred to in Article 24 (1) or Article 26 (1) shall be liable to a financial penalty of up to PLN 50,000 imposed by the trade control authority by a relevant administrative decision.

Article 40.

1. Financial penalties shall not be imposed after the period of 5 years following the date when the basis for liability referred to in Articles 37-39 was identified.
2. An imposed financial penalty shall not be collected after the period of 5 years following the date when the decision to impose such a penalty came into force.

Article 41.

1. The term of payment of a financial penalty shall be 30 days after the date when the decision to impose such a penalty came into force.
2. Financial penalties not settled by the set date shall be collectible along with default interest pursuant to provisions of the administrative enforcement procedure.

Article 42. If the payment of the imposed penalty by the set date referred to in Article 41 (1) considerably limits or prevents further business activities of the natural or legal person, the trade control authority may, if requested by the natural or legal person, issue an administrative decision to prolong the payment term or accept payment in instalments in a period up to 1 year.

Chapter 7

Amendments of existing provisions

Chapter 8

Temporary and final provisions

Article 51. The Law of 2 December 1993 on conditions of special control of foreign trade in goods and technologies related to international agreements and commitments (Journal of Laws No 129, item 598, of 1996 No 106, item 496, of 1997 No 88, item 554 and No 157, item 1026, and of 1999 No 70, item 775 and No 83, item 931) is hereby repealed.

Article 52. The Law shall come into force on 1 January 2001, save for:

- 1) Article 8 (2) – effective after 3 years as of the date of the publication;
- 2) Article 9 (4) subparagraphs 1 and 4, as well as Article 10 (1) – effective as of 1 January 2003.

**COUNCIL COMMON POSITION 2008/944/CFSP
of 8 December 2008
defining common rules governing control of exports of military technology
and equipment**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty of the European Union, and in particular Article 15 thereof,

Whereas:

- (1) Member States intend to build on the Common Criteria agreed at the Luxembourg and Lisbon European Councils in 1991 and 1992, and on the European Union Code of Conduct on Arms Exports adopted by the Council in 1998.
- (2) Member States recognise the special responsibility of military technology and equipment exporting States.
- (3) Member States are determined to set high common standards which shall be regarded as the minimum for the management of, and restraint in, transfers of military technology and equipment by all Member States, and to strengthen the exchange of relevant information with a view to achieving greater transparency.
- (4) Member States are determined to prevent the export of military technology and equipment which might be used for internal repression or international aggression or contribute to regional instability.
- (5) Member States intend to reinforce cooperation and to promote convergence in the field of exports of military technology and equipment within the framework of the Common Foreign and Security Policy (CFSP).
- (6) Complementary measures have been taken against illicit transfers, in the form of the EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms.
- (7) The Council adopted on 12 July 2002 Joint Action 2002/589/CFSP on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons.
- (8) The Council adopted on 23 June 2003 Common Position 2003/468/CFSP on the control of arms brokering.
- (9) The European Council adopted in December 2003 a strategy against the proliferation of weapons of mass destruction, and in December 2005 a strategy to combat illicit accumulation and trafficking of SALW and their ammunition, which imply an increased common interest of Member States of the European Union in a coordinated approach to the control of exports of military technology and equipment.
- (10) The UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects was adopted in 2001.
- (11) The United Nations Register of Conventional Arms was established in 1992.
- (12) States have a right to transfer the means of self-defence, consistent with the right of self-defence recognised by the UN Charter.
- (13) The wish of Member States to maintain a defence industry as part of their industrial base as well as their defence effort is acknowledged.
- (14) The strengthening of a European defence technological and industrial base, which contributes to the implementation of the Common Foreign and Security Policy, in particular the Common European Security and Defence Policy, should be accompanied by cooperation and convergence in the field of military technology and equipment.
- (15) Member States intend to strengthen the European Union's export control policy for military technology and equipment through the adoption of this Common Position, which updates and replaces the European Union Code of Conduct on Arms Exports adopted by the Council on 8 June 1998.
- (16) On 13 June 2000, the Council adopted the Common Military List of the European Union, which is regularly reviewed, taking into account, where appropriate, similar national and international lists.
- (17) The Union must ensure the consistency of its external activities as a whole in the context of its external relations, in accordance with Article 3, second paragraph of the Treaty; in this respect the Council takes note of the Commission proposal to amend Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual use items and technology,

HAS ADOPTED THIS COMMON POSITION:

Article 1

1. Each Member State shall assess the export licence applications made to it for items on the EU Common Military List mentioned in Article 12 on a case-by-case basis against the criteria of Article 2.
2. The export licence applications as mentioned in paragraph 1 shall include:
 - applications for licences for physical exports, including those for the purpose of licensed production of military equipment in third countries,
 - applications for brokering licences,
 - applications for 'transit' or 'transshipment' licences,
 - applications for licences for any intangible transfers of software and technology by means such as electronic media, fax or telephone. Member States' legislation shall indicate in which case an export licence is required with respect to these applications.

Article 2

Criteria

1. Criterion One: 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.

An export licence shall be denied if approval would be inconsistent with, inter alia:

- (a) the international obligations of Member States and their commitments to enforce United Nations, European Union and Organisation for Security and Cooperation in Europe arms embargoes;
- (b) the international obligations of Member States under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;
- (c) the commitment of Member States not to export any form of anti-personnel landmine;
- (d) the commitments of Member States in the framework of the Australia Group, the Missile Technology Control Regime, the Zangger Committee, the Nuclear Suppliers Group, the Wassenaar Arrangement and The Hague Code of Conduct against Ballistic Missile Proliferation.

2. Criterion Two: Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law.

- Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States shall:
 - (a) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used for internal repression;
 - (b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the military technology or equipment, to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe;

For these purposes, technology or equipment which might be used for internal repression will include, inter alia, technology or equipment where there is evidence of the use of this or similar technology or equipment for internal repression by the proposed end-user, or where there is reason to believe that the technology or equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with Article 1 of this Common Position, the nature of the technology or equipment will be considered carefully, particularly if it is intended for internal security purposes. Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

- Having assessed the recipient country's attitude towards relevant principles established by instruments of international humanitarian law, Member States shall:
 - (c) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law.

3. Criterion Three: Internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts.

Member States shall deny an export licence for military technology or equipment which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.

4. Criterion Four: Preservation of regional peace, security and stability.

Member States shall deny an export licence if there is a clear risk that the intended recipient would use the military technology or equipment to be exported aggressively against another country or to assert by force a territorial claim. When considering these risks, Member States shall take into account inter alia:

- (a) the existence or likelihood of armed conflict between the recipient and another country;
- (b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;
- (c) the likelihood of the military technology or equipment being used other than for the legitimate national security and defence of the recipient;
- (d) the need not to affect adversely regional stability in any significant way.

5. Criterion Five: National security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries.

Member States shall take into account:

- (a) the potential effect of the military technology or equipment to be exported on their defence and security interests as well as those of Member State and those of friendly and allied countries, while recognising that this factor cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability;
- (b) the risk of use of the military technology or equipment concerned against their forces or those of Member States and those of friendly and allied countries.

6. Criterion Six: 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.

Member States shall take into account, inter alia, the record of the buyer country with regard to:

- (a) its support for or encouragement of terrorism and international organised crime;
- (b) its compliance with its international commitments, in particular on the non-use of force, and with international humanitarian law;
- (c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions referred to in point (b) of Criterion One.

7. Criterion Seven: Existence of a risk that the military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions.

In assessing the impact of the military technology or equipment to be exported on the recipient country and the risk that such technology or equipment might be diverted to an undesirable end-user or for an undesirable end use, the following shall be considered:

- (a) the legitimate defence and domestic security interests of the recipient country, including any participation in United Nations or other peace-keeping activity;
- (b) the technical capability of the recipient country to use such technology or equipment;
- (c) the capability of the recipient country to apply effective export controls;
- (d) the risk of such technology or equipment being re-exported to undesirable destinations, and the record of the recipient country in respecting any re-export provision or consent prior to re-export which the exporting Member State considers appropriate to impose;
- (e) the risk of such technology or equipment being diverted to terrorist organisations or to individual terrorists;
- (f) the risk of reverse engineering or unintended technology transfer.

8. Criterion Eight: 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.

Member States shall take into account, in the light of information from relevant sources such as United Nations Development Programme, World Bank, International Monetary Fund and Organisation for Economic Cooperation and Development reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. They shall consider in this context the recipient country's relative levels of military and social expenditure, taking into account also any EU or bilateral aid.

Article 3

This Common Position shall not affect the right of Member States to operate more restrictive national policies.

Article 4

1. Member States shall circulate details of applications for export licences which have been denied in accordance with the criteria of this Common Position together with an explanation of why the licence has been denied. Before any Member State grants a licence which has been denied by another Member State or States for an essentially identical transaction within the last three years, it shall first consult the Member State or States which issued the denial(s). If following consultations, the Member State nevertheless decides to grant a licence, it shall notify the Member State or States issuing the denial(s), giving a detailed explanation of its reasoning.
2. The decision to transfer or deny the transfer of any military technology or equipment shall remain at the national discretion of each Member State. A denial of a licence is understood to take place when the Member State has refused to authorise the actual sale or export of the military technology or equipment concerned, where a sale would otherwise have come about, or the conclusion of the relevant contract. For these purposes, a notifiable denial may, in accordance with national procedures, include denial of permission to start negotiations or a negative response to a formal initial enquiry about a specific order.
3. Member States shall keep such denials and consultations confidential and not use them for commercial advantage.

Article 5

Export licences shall be granted only on the basis of reliable prior knowledge of end use in the country of final destination. This will generally require a thoroughly checked end-user certificate or appropriate documentation and/or some form of official authorisation issued by the country of final destination. When assessing applications for licences to export military technology or equipment for the purposes of production in third countries, Member States shall in particular take account of the potential use of the finished product in the country of production and of the risk that the finished product might be diverted or exported to an undesirable end user.

Article 6

Without prejudice to Regulation (EC) No 1334/2000, the criteria in Article 2 of this Common Position and the consultation procedure provided for in Article 4 are also to apply to Member States in respect of dual-use goods and technology as specified in Annex I to Regulation (EC) No 1334/2000 where there are serious grounds for believing that the end-user of such goods and technology will be the armed forces or internal security forces or similar entities in the recipient country. References in this Common Position to military technology or equipment shall be understood to include such goods and technology.

Article 7

In order to maximise the effectiveness of this Common Position, Member States shall work within the framework of the CFSP to reinforce their cooperation and to promote their convergence in the field of exports of military technology and equipment.

Article 8

1. Each Member State shall circulate to other Member States in confidence an annual report on its exports of military technology and equipment and on its implementation of this Common Position.
2. An EU Annual Report, based on contributions from all Member States, shall be submitted to the Council and published in the 'C' series of the Official Journal of the European Union.
3. In addition, each Member State which exports technology or equipment on the EU Common Military List shall publish a national report on its exports of military technology and equipment, the contents of which will be in accordance with national legislation, as applicable, and will provide information for the EU Annual Report on the implementation of this Common Position as stipulated in the User's Guide.

Article 9

Member States shall, as appropriate, assess jointly through the CFSP framework the situation of potential or actual recipients of exports of military technology and equipment from Member States, in the light of the principles and criteria of this Common Position.

Article 10

While Member States, where appropriate, may also take into account the effect of proposed exports on their economic, social, commercial and industrial interests, these factors shall not affect the application of the above criteria.

Article 11

Member States shall use their best endeavours to encourage other States which export military technology or equipment to apply the criteria of this Common Position. They shall regularly exchange experiences with those third states applying the criteria on their military technology and equipment export control policies and on the application of the criteria.

Article 12

Member States shall ensure that their national legislation enables them to control the export of the technology and equipment on the EU Common Military List. The EU Common Military List shall act as a reference point for Member States' national military technology and equipment lists, but shall not directly replace them.

Article 13

The User's Guide to the European Code of Conduct on Exports of Military Equipment, which is regularly reviewed, shall serve as guidance for the implementation of this Common Position.

Article 14

This Common Position shall take effect on the date of its adoption.

Article 15

This Common Position shall be reviewed three years after its adoption.

Article 16

This Common Position shall be published in the *Official Journal of the European Union*.

**List OF COUNTRIES COVERED BY THE BAN ON EXPORTS FROM THE TERRITORY
OF POLAND OF GOODS OF STRATEGIC IMPORTANCE
TO STATE SECURITY**

no.	country	notes
1	2	3
1.	REPUBLIC OF IRAQ	Does not apply to goods essential to the Government of the Republic of Iraq or the multinational force, meant to serve the purposes of UN Security Council resolution 1546 (2004). Does not apply to dual-use goods.
2.	ISLAMIC REPUBLIC OF IRAN	Does not apply to non-combat vehicles produced or outfitted to ensure protection from missiles and designated exclusively for use in the Islamic Republic of Iran for defensive purposes by staff of the EU or its Member States. Does not apply to dual use goods with the exception of all goods, materials, equipment and technologies that might assist the Islamic Republic of Iran in enrichment-related, reprocessing or heavy-water related activities, or the development of nuclear weapons delivery systems, in compliance with UN Security Council resolution 1737 (2006) and Common Position of the Council 2007/140/CFSP.
3.	DEMOCRATIC REPUBLIC OF CONGO	Does not apply to deliveries and linked aid for the exclusive needs of government units of the Democratic Republic of Congo, after prior notification to the relevant UN Sanctions Committee. Does not apply to deliveries and linked aid for the exclusive needs of the UN Mission in the Democratic Republic of Congo (MONUC). Does not apply to temporary deliveries of protective clothing, armored vests and helmets for the personal use of UN personnel and representatives of the media, and humanitarian and development aid organizations. Does not apply to non-lethal military equipment*, linked aid and training exclusively for humanitarian purposes and personal protection, after prior notification to the relevant UN Sanctions Committee. Does not apply to dual-use goods.
4.	DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA	Does not apply to non-combat vehicles produced or outfitted to ensure protection from missiles and designated exclusively for use in the Democratic People's Republic of Korea for defensive purposes by staff of the EU or its Member States.
5.	REPUBLIC OF LEBANON	Does not apply to supplies and related services undelivered, directly or indirectly, to militias the disarmament of which is demanded in UN Security Council resolutions 1559 (2004) and 1680 (2006) and on condition that a given transaction is approved by the Government of the Republic of Lebanon or UNIFIL, and that the goods or services are used by the armed forces of the Republic of Lebanon or UNIFIL in the course of their missions. Does not apply to dual-use goods.

1	2	3
6.	REPUBLIC OF LIBERIA	<p>Does not apply to deliveries and linked aid for the needs the UN Peace Mission in the Republic of Liberia (UNMIL).</p> <p>Does not apply to deliveries and linked aid for the needs of international training programs and reform of the armed forces and police of the Republic of Liberia and supplies of non-lethal military equipment* for humanitarian purposes and personal protection and technical assistance or training, after prior consent of the relevant Committee of the UN Security Council.</p> <p>Does not apply to temporary deliveries of protective clothing, including armored vests and helmets, for the personal use of UN personnel and representatives of the media, and humanitarian and development aid organizations.</p> <p>Does not apply to deliveries and linked aid hitherto provided to members of the Special Security Service (SSS) for training purposes and to supplies in SSS custody for its operational use, on condition that the transfer and linked aid for the SSS received prior consent of the relevant Committee of the UN Security Council.</p> <p>Does not apply to deliveries and linked aid for the exclusive use of members of the state armed forces and police verified and trained after the establishment of UNMIL, on condition that the deliveries received prior consent of the relevant Committee of the UN Security Council on the basis of a joint application by the Government of the Republic of Liberia and the exporter country.</p> <p>Does not apply to non-lethal military equipment * , other than non-lethal arms and ammunition, for the exclusive use of members of the state armed forces and police, verified and trained after the establishment of UNMIL, after prior notification to the relevant Committee of the UN Security Council.</p> <p>Does not apply to dual-use goods.</p>
7.	UNION OF MYANMAR	<p>Does not apply to deliveries of non-lethal military equipment* designated exclusively for humanitarian purposes and personal protection , or for institution-building programs of the United Nations, the European Union and the Community, or for UN and EU crisis-management operations and for related technical and financial assistance.</p> <p>Does not apply to engineering equipment and other mine-clearing equipment and to the related technical and financial assistance.</p> <p>Does not apply to temporary deliveries of protective clothing, including armored vests and helmets, for the personal use of UN personnel and representatives of the media, and humanitarian and development aid organizations.</p> <p>Does not apply to dual-use goods.</p>
8.	republic OF Sierra Leone	<p>Does not apply to the Government of the Republic of Sierra Leone. Does not apply to deliveries for the needs of the United Nations Mission in Sierras Leone (UNAMSIL) and ECOMOG peace forces.</p> <p>Does not apply to dual-use goods.</p>

1	2	3
9.	SOMALI REPUBLIC	<p>Does not apply to deliveries of arms and related equipment and direct or indirect provision of technical and financial services and other forms of support and training connected with military activity, designated exclusively for the support of or use by missions elaborated in UN Security Council resolutions 1744 (2007), 1846 (2008) and 1851 (2008). Does not apply to deliveries of arms and related equipment and direct or indirect provision of technical services designated for the exclusive needs of the security sector in the framework of the political process envisioned in UN Security Council resolution 1744(2007), in the event of absence of a negative decision by the relevant UN Sanctions Committee. Does not apply to deliveries of non-lethal military equipment* designated for humanitarian purposes and personal protection or for institution-building programs of the European Union, the Community and its Member States, including those in the security sphere, conducted in the framework of the Peace and Reconciliation Process, after prior consent by the relevant UN Sanctions Committee.</p> <p>Does not apply to temporary deliveries of protective clothing, including armored vests and helmets, for the personal use of UN personnel and representatives of the media and humanitarian and development aid organizations.</p> <p>Does not apply to dual-use goods.</p>
10.	republic of Sudan	<p>Does not apply to deliveries of non-lethal military equipment* for humanitarian purposes, monitoring of the observance of human rights, personal protection or for the implementation of specified programs of the United Nations, the African Union, the European Union and the Community and for crisis management operations of the European Union, the United Nations or the African Union.</p> <p>Does not apply to temporary deliveries of protective clothing, including armored vests and helmets, for the exclusive use of personnel of the United Nations, the European Union, the Community and its Member States and representatives of the media, humanitarian and development aid organizations and related staff..</p> <p>Does not apply to supplies and services provided in support of implementation of the Comprehensive Peace Agreement.</p> <p>Does not apply to engineering equipment and other goods for mine-clearing.</p> <p>Does not apply to dual-use goods.</p>
11.	REPUBLIC OF UZBEKISTAN	<p>Does not apply to deliveries of non-lethal military equipment* for humanitarian purposes, personal protection or for the implementation of specified programs of the United Nations, the European Union and the Community and for crisis management operations of the United Nations and the European Union.</p> <p>Does not apply to supplies for the forces of the International Assistance Security Force (ISAF) and Operation Enduring Freedom in the Islamic Republic of Afghanistan.</p> <p>Does not apply to dual-use goods.</p>
12.	REPUBLIC OF THE IVORY COAST	<p>Does not apply to deliveries for the needs of the United Nations Peace Mission in the Republic of the Ivory Coast (UNOCI) and the supporting French forces.</p> <p>Does not apply to temporary deliveries of protective clothing, including armored vests and helmets, for the exclusive use of personnel of the United Nations and the European Union and representatives of the media and humanitarian and development aid organizations.</p> <p>Does not apply to deliveries of non-lethal military equipment* for humanitarian purposes, personal protection and related technical assistance or training.</p> <p>Does not apply to supplies, technical assistance and training connected exclusively with the restructuring of the security and defense forces, after prior consent by the relevant UN Sanctions Committee.</p> <p>Does not apply to dual-use goods.</p>

1	2	3
13.	REPUBLIC OF ZIMBABWE	<p>Does not apply to deliveries of non-lethal military equipment* for humanitarian purposes and personal protection relating to specified programs of the United Nations and the European Union.</p> <p>Does not apply to temporary deliveries of protective clothing, including armored vests and helmets, for the exclusive use of personnel of the United Nations and the European Union and representatives of the media and humanitarian and development aid organizations.</p> <p>Does not apply to dual-use goods.</p>
14.	ALL COUNTRIES	<p>The ban applies to deliveries to Osama Bin Laden, members of the Al-Qaeda, the Taliban and other individuals, groups, communities and related enterprises in accordance with the list compiled pursuant to UN Security Council resolutions 1267 (1999) and 1333 (2000), regularly updated by the Committee established under Security Council resolution 1267 (1999).</p> <p>The ban applies to exports from the territory of the Republic of Poland of anti-personnel mines code-marked CN 9306 90 10 in the Combined Nomenclature constituting Annex 1 to Commission Regulation (EC) 1031/2008 of 18 September 2008 amending Annex 1 to Council Regulation (EEC) 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.</p> <p>The ban does not apply to mines :</p> <ol style="list-style-type: none"> 1) exported by units of the Polish Armed Forces taking part in operations designed to preserve international peace and security, 2) exported by units of the Polish Armed Forces taking part in military exercises organized on the basis of international agreements, 3) imported by military units of foreign countries for use in military exercises conducted in the territory of the Republic of Poland on the basis of international agreements.

* non-lethal military equipment: military equipment the use of which is not intended to kill a living target.

**LIST OF COUNTRIES SUBJECT TO RESTRICTIONS*
ON EXPORTS FROM THE TERRITORY OF THE REPUBLIC OF POLAND
OF GOODS OF STRATEGIC IMPORTANCE TO STATE SECURITY**

no.	country	notes
1.	PEOPLE'S REPUBLIC OF CHINA	Also applies to Taiwan. Does not apply to dual-use goods.
2.	republic OF CUBA	Does not apply to dual-use goods.
3.	SYRIAN ARAB REPUBLIC	Does not apply to dual-use goods. .

*) The restrictions consist in an obligation to obtain the consent of the Council of Ministers for export.

Brief descriptions of EU Common Military List categories

- ML 1. Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12,7 mm (calibre 0,50 inches) or less and accessories, and specially designed components therefor.
- ML 2. Smooth-bore weapons with a calibre of 20 mm or more, other weapons or armament with a calibre greater than 12,7 mm (calibre 0,50 inches), projectors and accessories, and specially designed components therefor.
- ML 3. Ammunition and fuse setting devices, and specially designed components therefor.
- ML 4. Bombs, torpedoes, rockets, missiles, other explosive devices and charges and related equipment and accessories, and specially designed components therefor.
- ML 5. Fire control, and related alerting and warning equipment, and related systems, test and alignment and countermeasure equipment, specially designed for military use, and specially designed components and accessories therefor.
- ML 6. Ground vehicles and components.
- ML 7. Chemical or biological toxic agents, 'riot control agents', radioactive materials, related equipment, components and materials.
- ML 8. 'Energetic materials', and related substances.
- ML 9. Vessels of war, (surface or underwater) special naval equipment, accessories, components and other surface vessels.
- ML 10. 'Aircraft', 'lighter than air vehicles', unmanned airborne vehicles, aero-engines and 'aircraft' equipment, related equipment and components, specially designed or modified for military use.
- ML 11. Electronic equipment, not controlled elsewhere on the EU Common Military List, and specially designed components therefor.
- ML 12. High velocity kinetic energy weapon systems and related equipment, and specially designed components therefor.
- ML 13. Armoured or protective equipment, constructions and components.
- ML 14. Specialised equipment for military training or for simulating military scenarios, simulators specially designed for training in the use of any firearm or weapon specified by ML1 or ML2, and specially designed components and accessories therefor.
- ML 15. Imaging or countermeasure equipment, specially designed for military use, and specially designed components and accessories therefor.
- ML 16. Forgings, castings and other unfinished products the use of which in a controlled product is identifiable by material composition, geometry or function, and which are specially designed for any products controlled by ML1 to ML4, ML6, ML9, ML10, ML12 or ML19.
- ML 17. Miscellaneous equipment, materials and 'libraries', and specially designed components therefor.
- ML 18. Production equipment and components of products referred to in the EU Common Military List.
- ML 19. Directed energy weapon systems (DEW), related or countermeasure equipment and test models, and specially designed components therefor.
- ML 20. Cryogenic and 'superconductive' equipment, and specially designed components and accessories therefor.
- ML 21. 'Software' specially designed or modified for the 'development', 'production' 'use' of equipment or materials controlled by the EU Common Military List.
- ML 22. 'Technology' for the 'development', 'production' or 'use' of items controlled in the EU Common Military List.

Participation in multilateral arms control regimes

Country	Zangger Committee	Nuclear Suppliers Group	Australia Group	Missile Technology Control Regime	Wassenaar Arrangement
Argentina	X	X	X	X	X
Australia	X	X	X	X	X
Austria	X	X	X	X	X
Belgium	X	X	X	X	X
Bielarus		X			
Brazil		X		X	
Bulgaria	X	X	X	X	X
Canada	X	X	X	X	X
China	X	X			
Croatia	X	X	X		X
Cyprus		X	X		
Czech Republik	X	X	X	X	X
Denmark	X	X	X	X	X
Estonia		X	X		X
Finland	X	X	X	X	X
France	X	X	X	X	X
Germany	X	X	X	X	X
Grece	X	X	X	X	X
Hungary	X	X	X	X	X
Iceland		X	X	X	
Ireland	X	X	X	X	X
Italy	X	X	X	X	X
Japan	X	X	X	X	X
Latvia		X	X		X
Lithuania		X	X		X
Luxembourg	X	X	X	X	X
Kazakhstan	X	X			
Malta		X	X		X
Netherlands	X	X	X	X	X
New Zealand		X	X	X	X
Norway	X	X	X	X	X
Poland	X	X	X	X	X
Portugal	X	X	X	X	X
Republik of Korea	X	X	X	X	X
Romania	X	X	X		X
Russian Federation	X	X		X	X
Slovakia	X	X	X		X
Slovenia	X	X	X		X
South Africa	X	X		X	X
Spain	X	X	X	X	X
Sweden	X	X	X	X	X
Switzerland	X	X	X	X	X
Turkey	X	X	X	X	X
Ukraine	X	X	X	X	X
United Kingdom	X	X	X	X	X
United States	X	X	X	X	X
Total	37	46	40	34	40