

WA-LEOM (00) ES 1
17-02-00

**REPLY OF THE KINGDOM OF SPAIN TO THE QUESTIONNAIRE ON THE
WASSENAAR ARRANGEMENT ON PARTICIPATING STATES' POLICY
AND/OR NATIONAL PRACTICES AND PROCEDURES FOR
THE EXPORT OF CONVENTIONAL ARMS AND DUAL-USE GOODS,
INCLUDING RELATED SOFTWARE AND TECHNOLOGY**

Part I. Conventional Arms including Related Software and Technology

1. Basic principles, policies and/or national practices regarding conventional arms exports

Spain's policy on exports of conventional arms and the related software and technology is marked by its legality and its restrictive nature, taking account of strategic and economic interests and national security, international treaties in the field, and with particular reference to the "principles regulating the transfer of conventional arms" in the Wassenaar Arrangement, the OSCE and embargoes and restrictions ordered by the United Nations and the European Union, together with the country's own foreign policy. In addition, the eight common criteria adopted by the European Councils of Luxembourg (1991) and Lisbon (1992) and given form in the E.U.'s June 8 1998 Code of Conduct on arms exports, have been specifically incorporated into the current legislation.

2. The national legislation governing relevant exports and any additional specific legislation covering transit, transshipment, trafficking and/or brokering of conventional arms (see question 7).

The current Spanish provisions regulating this trade are as follows:

- a) Organic Act no. 3 of April 30 1992 (published in Official State Gazette no. 105) defining contraband in the field of the exports of defence or dual-use material.
- b) Organic Act no. 12 of December 10 1995 (Official State Gazette no. 297) repressing contraband.
- c) Royal Decree no. 491 of March 27 1998 (Official State Gazette no. 84) approving the Overseas Trade Regulations on Defence and Dual-Use Material.
- d) The Ministerial Order of June 30 1998 (Official State Gazette no. 163) regulating the procedures and formalities for overseas trade in defence and dual-use material.
- e) Royal Decree no. 1631 of December 29 1992 (Official State Gazette no. 1/93) on restrictions on intra-Community movement of defence and dual-use material, among others. Amended in Royal Decree no. 652 of April 15 1994

WA-LEOM (00) ES 1
17-02-00

(Official State Gazette no. 115) and the Ministerial Order of May 17 (Official State Gazette no. 119).

- f) Royal Decree no. 230 of February 16 1998 on the Explosives Regulations.
- g) Royal Decree no. 137 of January 29 1993 on the Arms Regulations.

3. In addition to the WA Munitions List, are other items controlled, e.g. technical services, sporting firearms?

A twenty-third chapter has been added to the Spanish legislation referring to materials for paramilitary or security use.

Imports of sporting or hunting firearms are controlled; exports are not.

There are no controls on the exportation of technical assistance or intangible technology.

4. The procedures for processing relevant export applications:

- a) Who is the issuing authority?
- b) What other authorities are involved and what is their function?
- c) Who deals with compliance/enforcement?

In general, this process involves the following phases:

- 1.- Companies wishing to export defence or dual-use material must be entered in the Special Register of Defence Material Exporters.
 - 2.- They must file a licence application form with the Secretariat-General of Overseas Trade in the Ministry of the Economy and Finance.
 - 3.- The Inter-Ministerial Board on Overseas Trade in Defence and Dual-Use Material (JIMDDU) must issue a favourable report in order for the licence to be granted by the Secretariat-General of Overseas Trade in the Ministry of the Economy and Finance.
 - 4.- The companies are required to submit the control documents on the final destination of the goods as indicated in the current legislation (Certificate of Final Destination, CUD, International Import Certificate, CII, Declaration of Final Destination, DUD, Certificate of Entry, CVE, etc.).
- a) The authority which issues the export licences is the Secretariat-General of Overseas Trade in the Ministry of the Economy and Finance.
 - b) The JIMDDU is the inter-ministerial body which issues the mandatory and binding preliminary report on applications for export licences, and comprises

WA-LEOM (00) ES 1
17-02-00

representatives of each of the following Ministries: Foreign Affairs, Defence, Economy and Finance, Interior, and Industry and Energy.

- c) All the bodies involved are generally considered responsible for enforcement - the JIMDDU, the Secretariat-General of Overseas Trade - but with particular attention paid to controls on the departure of shipments.

5. Principles and national regulations on the destination or end-user of the equipment. Is there a complete *erga omnes* system or a published list of:

- **Destinations of concern?**
 - **Embargoed countries?**
 - **Differentiation between destinations, e.g. is there any preferential treatment of (groups of) countries?**
- a) Defence material exports require either a Final Destination Certificate with or without a re-export clause, an International Import Certificate, or a Declaration of Final Destination.
- b) The Spanish control authorities keep the list of countries restricted for the export of defence material embargoed by the U.N. or the E.U. Spain is also able to place restrictions on exports of such material to other countries for reasons of foreign policy or national security.
- c) For defence material exports, there is a group of countries for which formalities are simplified (member countries of the Wassenaar Arrangement). Transfer of firearms to E.U. countries is subject to a more flexible procedure.

6. Requirements for the provision of an end-user certificate in an export licence application, any no-re-export clauses, or any other type of certification before and after delivery of conventional arms under an export contract. If applicable, please specify whether any such end-user certificates and/or non-re-export clauses are verified before or after delivery.

Where the material for export is a "war weapon", all exporters are required to present a Certificate of Final Destination with a non-re-export clause as a prerequisite for authorisation of the licence. For other defence material, an International Import Certificate or Declaration of Final Destination is required, endorsed by the authorities concerned in the importing country.

Control documents are endorsed by the legalisation of the signatures in diplomatic and consular offices. Where the JIMDDU deems fit, additional documents are required evidencing the entry of the material in the country of destination, such as a certificate of entry, or an equivalent document of dispatch for consumption.

WA-LEOM (00) ES 1
17-02-00**7. National definition of:**

- transit
- transshipment (including custom free zones)
- trafficking, and
- brokering

of conventional arms, including related software and technology, and provide details of respective compliance/enforcement procedures.

- a) Transit of arms through Spanish territory is governed by Articles 67 – 71 of the Arms Regulations passed in Royal Decree no. 137 of March 5 1993 (Official State Gazette no. 55).

Authorisation for the transit of arms is applied for and granted if applicable in the Ministry of Foreign Affairs, following a report of the Ministries of Defence and the Interior: when granted, it is notified to these Departments and to the Ministry of Development and the Ministry of the Economy and Finance (Customs Department).

- b) No national definition.
- c) No national definition.
- d) No national definition.

8. The exporter's obligation to seek official government authority to enter into contract negotiations or to sign contracts with foreign customers.

The Spanish legislation does not require companies to report to the Administration on the commencement of negotiations with potential foreign customers for arms exports.

The same applies to the signing of contracts. Companies frequently file advance enquiries with the JIMDDU on their possible contracts for the export of defence and dual-use material (Prior Agreement Authorisation).

9. Policy on the revocation or suspension of export licences once they have been approved; please list any published regulations:

Pursuant to Article 6 of Royal Decree no. 491/1998, licences may be refused, suspended or revoked in the following circumstances:

- a) Where there are reasonable indications that the defence or dual-use material may be used in actions disrupting world or regional peace, stability or security, or their export may breach international undertakings given by the Kingdom of Spain.

WA-LEOM (00) ES 1
17-02-00

- b) When the transactions concerned may negatively affect the general interests of national defence or State foreign policy.
- c) In compliance with the directives in the E.U.'s Code of Conduct since it came into effect in June 1998.

10. The penal, financial and/or administrative implications for any exporter failing to comply with national controls.

Article 2.1.j) of the Organic Anti-Contraband Act, Act no. 12 of December 12 1995 classifies as an offence and imposes penalties of *prisión menor** and fines of twice to four times the value of the exported goods upon those exporting defence or dual-use material without authorisation, or who obtain authorisation with a false or incomplete declaration as to their nature or final destination, or by any other unlawful means.

11. Any circumstances in which relevant exports do not require an export licence.

In general, there are no circumstances providing release from the requirement to apply for an export licence to sell arms overseas, except for the transfer of firearms (pistols and revolvers) to E.U. countries, the simplified formalities for which are mentioned in reply to Question 15.

12. Official licence applications and licence documents and any standard conditions attached to the licence (copies to be provided)

There is a single form for the Licence to Export/Dispatch Defence and Dual-Use Material, comprising an original and 6 copies, 2 for the Secretariat-General of Overseas Trade, 1 for the Deputy Directorate-General of Commercial Information Technology, 1 for the holder, 1 for the Directorate-General of Arms and Matériel, 1 for Customs and 1 for the Directorate-General of the Civil Guard.

The authorisation as such is the application form, once sealed and signed and with the date of concession perforated by the Secretariat-General of Overseas Trade in the Ministry of the Economy and Finance.

The copies requested are enclosed.

*Note: a prison term, now repealed, of between six months plus one day and six years.

WA-LEOM (00) ES 1
17-02-00

13. Different types of licences (e.g. individual, general, restricted, full, permanent, temporary, etc.) and what they are used for.

There is a single defence material export application form, the so-called "Defence Material Export/Dispatch Licence", which may be individual or global.

The latter category allows one or more dispatches of defence material and/or related technology included in it up to the maximum figure established in the authorisation, to one or more recipients and one or more countries, defined on additional pages, through one or more specified Customs services, and within a period of validity of six months.

14. Advice given to exporters as to licensability, such as the likelihood of approval for a possible transaction.

Defence material export enquiries may be filed, at the request of exporters, with the JIMDDU and the various bodies involved in authorising exports, in writing or verbally (in visits or by telephone), on procedures, restrictions, embargoes, etc.

Prior clearance from the Authorities may be obtained with a Prior Agreement application form.

15. Any other pertinent information pertaining to relevant exports, e.g. the involvement of executive and/or legislative authorities in the export control administration such as in the approval process. What are the reporting requirements to the executive and/or legislative authorities?

Spanish parliamentary groups frequently submit enquiries with the ministries concerned about defence material exports which are replied to, in line with their content, for Parliament's general information.

Every six months, the Spanish Parliament receives a list of defence and dual-use material export transactions by countries of destination, for that period.

Firearms (pistols and revolvers) exported to E.U. countries receive special treatment. Those concerned apply for authorisation to transfer (this is the term used, rather than export) from the Ministry of the Interior (Directorate-General of the Civil Guard) accompanied by the prior permission or consent of the E.U. Member State of destination of the arms: the transfer is authorised as long as the requirements in the legislation are complied with.

WA-LEOM (00) ES 1
17-02-00

- 16. Any other programs in place to assist exporters to become aware of their responsibilities with regard to exports.**

Exporters have general information imparted in seminars, periodicals such as the journal of the Secretariat of State for Trade, Tourism and Small and Medium-Sized Enterprises, ICE (Spanish Commercial Information) and on the Internet (<http://www.mcx.es/dgcomex/mddu>).

- 17. Are all related technology/software transfers controlled whether they are tangible or intangible (e.g., fax, phone, Internet, etc.)? Is the transfer of know-how controlled?**

Only tangible software/technology-related and know-how transfers are controlled.

- 18. Is it necessary to register as an arms exporter and, if so, what criteria must be met in order to qualify for registration?**

Yes. This was established in Royal Decree no. 480/88. Entry in the Special Defence and Dual-Use Material Exporters Register is an essential pre-requisite to an application for any type of export or re-export operation, whether involving defence material, dual-use material or a preliminary export agreement.