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Federal Act on the Control of Dual-Use Goods and of Specific Military Goods (Goods Control Act, GCA)

of 13 December 1996 (Status as of 1 January 2010)

The Federal Assembly the Swiss Confederation,

based on the powers of the Confederation in foreign affairs¹
as well as on Article 64^{bis} of the Federal Constitution^{2,3}
and having considered the Federal Council Dispatch dated 22 February 1995⁴,
decrees:

Section 1: General Provisions

Art. 1 Purpose

This Act is intended to allow for the control of goods usable for civilian and military purposes (dual-use goods) and specific military goods.

Art. 2 Scope of application

¹ This Act applies to dual-use goods and specific military goods that form the subject matter of international agreements.

² The Federal Council shall determine which dual-use goods and which special military goods that from the subject matter of international control measures that are not binding under international law are subject to this Act.

³ This Act only applies insofar as the Federal Act of 13 December 1996⁵ on War Material or the Atomic Energy Act of 23 December 1959⁶ is not applicable.

AS 1997 1697

¹ Powers in accordance with Art. 54 para. 1 of the Federal Constitution of 18 April 1999 (SR 101)

² [BS 1 3]. This provision now corresponds to Art. 123 of the Federal Constitution of 18 April 1999 (SR 101).

³ Amended in accordance with No. I 4 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Material, Explosives and Goods Usable for Civilian and Military Purposes, in force since 1 March 2002 (AS 2002 248 257, BBl 2000 3369).

⁴ BBl 1995 II 1301

⁵ SR 514.51

Art. 3 Definitions

In this Act:

- a. *goods* means commodities, technologies and software;
- b. *dual-use goods* means goods that may be used both for civilian and military purposes;
- c. *specific military goods* means goods that have been designed or modified for military purposes, but which are neither weapons, ammunition, explosives nor any other means of combat, together with military training aircraft equipped with suspension points;
- d. *technology* means information for the development, manufacture or use of goods that is neither generally accessible nor serves the purposes of pure scientific research;
- e. *brokerage* means the creation of the essential requirements for the conclusion of agreements or the conclusion of such agreements itself, if such service is provided by third parties, irrespective of the location of the goods.

Section 2: Control Measures**Art. 4** Implementation of international agreements

For the purpose of implementing international agreements, the Federal Council may:

- a. introduce licence and reporting requirements and order supervisory measures for:
 - 1.⁷ the research, development, manufacture, storage, transfer and use of goods,
 2. the import, export, transit and brokerage of goods;
- b. issue regulations on inspections.

Art. 5 Support for other international control measures

In support of international control measures that are not binding under international law, provided such measures are also supported by Switzerland's most important trading partners, the Federal Council may:

- a. introduce licence and reporting requirements;
- b. order supervisory measures

⁶ [AS 1960 541, 1987 544, 1993 901 Annex 9, 1994 1933 Art. 48 No. 1, 1995 4954, 2002 3673 Art. 17No. 3, 2004 3503 Annex 4. AS 2004 4719 Annex I No. 1]. See now: the Nuclear Energy Act of 21 March 2003 (SR 732.1).

⁷ Amended in accordance with No. 14 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Material, Explosives and Goods Usable for Civilian and Military Purposes, in force since 1 March 2002 (AS 2002 248 257, BBl 2000 3369).

in respect of the import, export, transit and brokerage of goods.

Art. 6 Refusal of licences

¹ Licences shall be refused if:

- a. the activity covered by the application violates international agreements;
- b. the activity covered by the application violates control measures that are not binding under international law but which are supported by Switzerland;
- c. corresponding enforcement measures have been taken in accordance with the Embargo Act of 22 March 2002^{8,9}.

^{1bis} Licences shall also be refused if there is reason to believe that the activity covered by the application may benefit terrorist groups or organised crime.¹⁰

² Licences for specific military goods shall also be refused if the United Nations or states that participate with Switzerland in international export control measures prohibit the export of such goods, and if Switzerland's most important trading partners adhere to these prohibitions.

Art. 7 Revocation of licences

¹ Licences shall be revoked if the situation has changed to such an extent since the licence was granted that the requirements for refusal in accordance with Article 6 are fulfilled.

² Licences may be revoked if conditions and obligations related thereto are not complied with.

Art. 8 Measures in relation to specific countries of destination

¹ For the purpose of implementing international agreements, the Federal Council may provide that no licences be issued for certain countries of destination.

² The Federal Council may provide for a relaxation or an exemption from control measures for certain countries of destination, and in particular for:

- a. contracting parties to international agreements; or
- b. countries participating in non-binding international control measures supported by Switzerland.

⁸ SR **946.231**

⁹ Amended in accordance with Art. 17 No. 2 of the Embargo Act of 22 March 2002, in force since 1 Jan. 2003 (SR **946.231**).

¹⁰ Inserted by No. 14 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Material, Explosives and Goods Usable for Civilian and Military Purposes, in force since 1 March 2002 (AS **2002** 248 257, BBl **2000** 3369).

Section 3: Monitoring

Art. 9 Duty to provide information

¹ Whoever applies for or has received a licence is obliged to provide all the information and submit the documents to the control authorities that are required for a comprehensive assessment or control.

² Whoever is subject in any other way to the control measures under this Act is also subject to the same requirements.

Art. 10 Powers of the control authorities

¹ The control authorities have the right to enter and inspect the business premises of persons required to provide information during normal working hours without prior notice as well as to inspect the relevant documents. They may confiscate incriminating material. If there is a suspicion that offences have been committed, further provisions of procedural law may apply.

² The control authorities may request the assistance of the police of the cantons and communes as well as the investigative authorities of the Federal Customs Administration.¹¹ If there is evidence of violations of this Act, the control authorities may request the assistance of the Federal Intelligence Service and the relevant federal police authorities.¹²

³ The control authorities may process personal data for the purposes of this Act. In the case of particularly sensitive data, only such data relating to administrative or criminal prosecutions or penalties may be processed. Other particularly sensitive personal data may be processed if this is essential in order to deal with the case in question.

⁴ The control authorities are obliged to preserve official secrecy and must take all the necessary precautions in their activities to prevent industrial espionage.

Section 4: Procedures and Reporting

Art. 11 Jurisdiction and procedure

The Federal Council shall designate the competent authorities and regulate the details of procedures. Border controls are the responsibility of the customs authorities.

¹¹ Amended in accordance with No. 18 of the Ordinance of 12 Dec. 2008 on the Amendment of Statutory Provisions following the Transferral of the Intelligence Service Sections of the Analysis and Prevention Service to the DDPS, in force since 1 Jan. 2009 (AS 2008 6261).

¹² Second sentence amended in accordance with No. 19 of the Ordinance of 4 Dec. 2009 on the Amendment of Statutory Provisions following the Establishment of the Federal Intelligence Service, in force since 1 Jan. 2010 (AS 2009 6921).

Art. 12 Appeals procedure

The procedure for appeals against rulings under this Act is governed by the general provisions on the administration of federal administrative justice.

Art. 13 Reporting

The Federal Council shall inform the Federal Assembly on the application of this Act in its reports on foreign economic policy.

Section 5: Criminal Provisions¹³**Art. 14** Felonies and misdemeanours

¹ A sentence of imprisonment or a fine not exceeding 1 million francs shall be imposed on anyone who wilfully:

- a. produces, stores, passes on, uses, imports, exports, transports or brokers goods without the required licence, or fails to comply with the conditions and requirements of a related licence;
- b. passes on to or brokers technology or software for a recipient abroad without the required licence or fails to comply with the conditions and requirements of a related licence;
- c. provides in an application incorrect or incomplete information that is necessary for the granting of a licence, or uses such an application that has been completed by a third party;
- d. ¹⁴ fails to report or incorrectly reports goods for import, export, transit or brokerage;
- e. delivers or passes on goods to or brokers goods, or has goods delivered or passed on to or brokered for a person other than the end purchaser or final destination stated in the licence;
- f. allows goods to come into the possession of a person whom he knows or must assume will pass such goods on directly or indirectly to end consumers who may not be supplied with such goods.

² In serious cases, the penalty is penal servitude not exceeding ten years, which may be combined with a fine not exceeding 5 million francs.

³ If the offence is committed through negligence, the penalty is imprisonment not exceeding six months or a fine not exceeding 100 000 francs.

¹³ As of 1 Jan. 2007 the potential penalties and prescriptive periods must be interpreted and/or calculated in application of Art. 333 para. 2-6 of the Swiss Criminal Code (SR **311.0**) in the wording of the Federal Act of 13 Dec. 2002 (AS **2006** 3459).

¹⁴ Amended in accordance with Annex No. 21 of the Customs Act of 18 March 2005, in force since 1 May 2007 (SR **631.0**)

Art. 15 Contraventions

¹ A sentence of detention or a fine not exceeding 100 000 francs shall be imposed on anyone who wilfully:

- a. refuses to provide information, documents or access to business premises in accordance with Articles 9 and 10 paragraph 1 or provides false information in this connection;
- b. violates in any other way a provision of this Act or of an implementation regulation, the contravention of which is declared to be a criminal offence, or an order issued that makes reference to the penalties provided in this Article provided that the culpable conduct does not constitute a different criminal offence.

² Attempts and complicity also constitute a criminal offence.

³ If the offence is committed through negligence, the penalty is a fine not exceeding 40 000 francs.

⁴ The right to prosecute prescribes after five years. In the event that the prescriptive period is interrupted, it may be extended by up to a maximum of one half.

Art. 15a¹⁵ Administrative offences

¹ A fine not exceeding 5000 francs shall be imposed on anyone who wilfully or negligently infringes:

- a. a provision of this Act or an implementation regulation, the contravention of which is declared to be a criminal offence;
- b. an order that makes reference to the penalties provided in this Article.

² In minor cases, an official warning may be issued instead of a fine.

Art. 16 Offences by commercial enterprises

In the case of offences by commercial enterprises, Article 6 of the Federal Act on Administrative Criminal Law applies¹⁶.

Art. 17¹⁷ Confiscation of Material

The court shall, without regard to the culpability of any specific person, order the confiscation of the material in question, if and to the extent that no guarantee of its legitimate use is given. The confiscated material, together with any proceeds from its use or sale, shall be forfeited to the Confederation subject to the provisions of the Federal Act of 19 March 2004¹⁸ on the Division of Confiscated Assets.

¹⁵ Inserted by No. 14 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Material, Explosives and Goods Usable for Civilian and Military Purposes, in force since 1 March 2002 (AS **2002** 248 257, BBl **2000** 3369).

¹⁶ SR **313.0**

¹⁷ Amended in accordance with Annex No. 6 of the Federal Act of 19 March 2004 on the Division of Confiscated Assets, in force since 1 Aug. 2004 (SR **312.4**).

¹⁸ SR **312.4**

Art. 18 Jurisdiction and duty to report

¹ The prosecution and judgement of offences under Articles 14 and 15 are subject to federal criminal jurisdiction.¹⁹

^{1bis} The prosecution and judgement of offences under Article 15a are subject to the Federal Act of 22 March 1974²⁰ on Administrative Criminal Law.²¹

² The licensing and control authorities, the police in the cantons and the communes and the customs authorities are obliged to report to the Office of the Attorney General of Switzerland any offences against this Act that they encounter or that come to their knowledge in the course of their official activities.

Section 6: Cooperation among Authorities**Art. 19** Administrative assistance within Switzerland

The responsible authorities of the Confederation as well as the cantonal and communal police may provide each other and the relevant supervisory authorities with data, provided this is necessary for the implementation of this Act.

Art. 20 Administrative assistance between Swiss and foreign authorities

¹ The federal authorities responsible for enforcement, control, crime prevention or prosecution may cooperate with the responsible foreign authorities as well as with international organisations or bodies and coordinate investigations, provided:

- a. this is necessary for the implementation of this Act or corresponding foreign regulations; and
- b. the foreign authorities, international organisations or bodies are required to preserve official secrecy or are bound by a corresponding duty of confidentiality, and guarantee protection against industrial espionage in their domain.

² They may in particular request foreign authorities and international organisations or bodies to provide the data that is required. In order to obtain such data, they may disclose to these authorities, organisations or bodies information on:

- a. the nature, quantity, place of destination and use, purpose, and recipients of goods;
- b. persons involved in the manufacture, supply or brokerage of goods;
- c. the financial aspects of the transaction.

¹⁹ Amended in accordance with No. 14 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Material, Explosives and Goods Usable for Civilian and Military Purposes, in force since 1 March 2002 (AS **2002** 248 257, BBI **2000** 3369).

²⁰ SR **313.0**

²¹ Inserted by No. 14 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Material, Explosives and Goods Usable for Civilian and Military Purposes, in force since 1. March 2002 (AS **2002** 248 257, BBI **2000** 3369).

³ If the foreign state has been granted reciprocal rights, the federal authorities may in accordance with paragraph 1 disclose the data in terms of paragraph 2 on their own initiative or on request, provided the foreign authority gives assurance that the data:

- a. will be processed only for the purposes of this Act; and
- b. will be used in criminal proceedings only if it has been obtained after the fact in accordance with the provisions on international mutual assistance.

⁴ The federal authorities may also in accordance with paragraph 1 disclose the data to international organisations or bodies subject to the requirements of paragraph 3, in which case the requirement of reciprocity may be waived.

⁵ The provisions on the international mutual assistance in criminal matters are reserved.

Art. 21²² Information service

An information service shall procure, process and pass on data to extent required for the implementation of this Act, crime prevention and prosecution.

Section 7: Final Provisions

Art. 22 Implementation

¹ The Federal Council shall enact the implementation provisions.

² The Federal Department of Economic Affairs may amend and update the lists drawn up by the Federal Council in implementation of Article 2 paragraphs 1 and 2 and of Article 8 paragraph 2 letter b.

Art. 23 Referendum and commencement

¹ This Act is subject to an optional referendum.

² The Federal Council shall determine the commencement date.

Commencement date: 1 October 1997²³

²² Amended in accordance with No. I 4 of the Federal Act of 22 June 2001 on the Streamlining of Federal Legislation on Arms, War Material, Explosives and Goods Usable for Civilian and Military Purposes, in force since 1 March 2002 (AS **2002** 248 257, BBl **2000** 3369).

²³ Federal Council decree of 25 June 1997 (AS **1997** 1703)