



Federal Ministry  
of Economics  
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Brokering Legislation -  
covering Dual-Use goods and SALW.

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## Structure

- 1) Brokering in general**
- 2) German brokering legislation covering Dual-Use goods and SALW**

## Brokering

### Brokering and Export controls:

- ▶ Brokering legislation should **avoid circumvention** of export controls by exploiting loopholes or differing levels of control between states.
- ▶ Brokering legislation should **complement** export controls.

## Brokering

- ▶ **But:** Loopholes do not exist when a brokering activity is followed by an arms export from the territory of the same country.
- ▶ In these cases export control legislation is applicable anyway.
- ▶ Therefore an additional control of the brokering activity has **no additional value**.

## Brokering

- ▶ To avoid unnecessary administrative burden and to strengthen effectiveness, brokering controls should focus on cases where the physical export is carried out from the territory of another country.
- ▶ **This means: Brokering controls should focus on transfers from one third country to another third country.**

## Brokering

### **Territorial scope of brokering controls:**

- ▶ In general every country should control brokering activities taking place in their own territory.
- ▶ **However:** Even minor activities (e.g. a telephone call or an E-Mail from the transit area of an airport) could create a linkage to the territory.

## Brokering

### Territorial scope of brokering controls:

- ▶ An **extension of brokering controls** to apply extraterritoriality is **only desirable for certain groups** of brokering cases.
- ▶ E.g. the **EU Common Position** on Brokering **covers** only brokering activities taking place in the Member States, but **encourages** the Member States to consider controlling brokering activities outside of their territory.

## Brokering

### What are the criteria for assessing applications for brokering activities?

- ▶ Each individual case of brokering should be evaluated on a **case by case** basis.
- ▶ In principle the **criteria** should be **similar to those governing licensing procedures for arms exports**.
- ▶ E.g. the criteria defined in the **EU Code of Conduct on Arms Exports**.

## German legislation on brokering

In Germany we have different legislation depending on the type of goods:

- ▶ war weapons
- ▶ other military equipment

## War weapons

- ▶ Examples for war weapons are:  
Tanks, fighter aircrafts or submarines.
- ▶ All war weapons are listed in the war weapons list.
- ▶ War weapons could be described as **lethal military weapons and platforms.**

## Brokering of war weapons

- ▶ As one of the first countries **Germany adopted legislation on brokering** activities for war weapons **already in 1978**.
- ▶ According to **section 4a** of the War Weapons Control Act, **each individual case of brokering** related to war weapons located outside Germany **requires a licence** if at least one element of the brokering operation is linked with German territory.

## Brokering of other military equipment

**During the last years brokering became an important subject in different international fora:**

- ▶ **OSCE:** German-Norwegian Best Practice Guide
- ▶ **European Union:** Common Position on brokering
- ▶ **United Nations:** Programme of Action on SALW

## The EU Common Position of 23 June 2003

- ▶ The **Common position** 2003/468/CFSP is a **milestone** on the way to effective international brokering legislation.
- ▶ The objective is to control arms brokering in order to avoid **circumvention of UN, EU or OSCE embargoes**, as well as **of the criteria** defined in the European Union Code of Conduct on Arms Exports.

## The EU Common Position of 23 June 2003

- ▶ **The CP covers all brokering activities**
- ▶ that may involve the **transfer of items** on the EU Common Military List (almost a copy of the WA Munitions List)
- ▶ **from a third country to any other third country.**

## The EU Common Position of 23 June 2003

- ▶ The Common Position **does not cover** brokering of **Dual-use goods.**

## German legislation on brokering with other military equipment

- ▶ **Germany** has adopted legislation on brokering with war weapons already in **1978**.
- ▶ In order to implement the EU Common Position Germany **extended brokering controls to all military equipment in 2006**.
- ▶ Since 2006 **brokering with all items of the EU Common Military list** is controlled in Germany.

## German legislation on brokering with other military equipment

- ▶ The extension of brokering controls to all items on the EU Common Military List was implemented in the Foreign Trade and Payments Regulation in May 2006.

## German legislation on brokering with other military equipment

### **Brokering activities are defined according to the EU Common Position:**

**„negotiating or arranging transactions that may involve the **transfer** of items of the EU military list **from a third country to any other third country**“**

## German legislation on brokering and Dual-use Goods

- ▶ As already mentioned the CP does not cover brokering of **Dual-use goods**.
- ▶ In 2003 (adoption of the CP) this was in line with **wide international agreement that brokering controls should initially cover military products**.

## German legislation on brokering and Dual-use Goods

- ▶ In the **ongoing discussion** on brokering in different fora brokering legislation covering Dual-use goods becomes increasingly important.
- ▶ E.g. in the European Union there are considerations about integrating brokering legislation in the EU-Dual-use-Regulation.

## German legislation on brokering and Dual-use Goods

- ▶ **In Germany beyond the provisions of the EU brokering of some sensitive Dual-use goods requires a brokering licence since 2006.**
- ▶ Covered are the Dual-use goods which are listed in **Annex IV** of the Dual-use Regulation.
- ▶ E.g. Stealth technology and certain explosives.

## German legislation on brokering and Dual-use Goods

- ▶ In Germany brokering of Annex IV Dual-use goods is controlled in the same way as brokering of military equipment.
- ▶ The reason for covering Dual-use goods is that the German Government regards the **Annex IV Dual-use goods as more sensitive** than other Dual-use goods.

## Further Developments?

- ▶ Regarding brokering of Dual-use goods we will have to await future developments.

## German legislation on SALW brokering

- ▶ In Germany **Small Arms and Light Weapons** are contained in the **War Weapons Control List**.
- ▶ This means that **already since 1978 brokering of SALW requires a brokering licence according to section 4a (War Weapons Control Act)**.

## German legislation on SALW brokering

### SALW brokering and extraterritoriality:

- ▶ In general, every country should control brokering activities taking place in their own territory.
- ▶ An **extension of brokering controls** to apply extraterritoriality is **only desirable for certain groups** of brokering cases.

## German legislation on SALW brokering

- ▶ From the German point of view regarding SALW we have such a certain group of brokering cases.

## German legislation on SALW brokering

- ▶ The amendment of German export control legislation in May 2006 extended the scope of brokering controls to the whole world if SALW is concerned.

## German legislation on SALW brokering

- ▶ **This means that every brokering activity with SALW carried out by German residents somewhere in the world requires a german brokering licence.**

## German legislation on SALW brokering

- ▶ This extension of brokering controls rests upon the **specific dangerousness of SALW**.
- ▶ Germany has committed herself to various international conventions dealing with SALW (e.g. UN, OSCE, EU).
- ▶ SALW play a sad role in armed conflicts all over the world.
- ▶ SALW are easy to handle, very long-living and rather cheap.

**Thank you very much for your attention!**

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