

**Information on measures undertaken by Ukraine
to implement the UN 2001 Program of Action to Prevent, Combat and
Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects**

Ukraine has enacted adequate legislation and has put in place appropriate structures and procedures to exercise effective control over the small arms and light weapons (SALW).

The production, marking, possession and destruction of this category of weapons is licensed and supervised in accordance with a number of regulations issued by the Ministry of Defense, Ministry of Industrial Policy and Ministry of Interior. These regulations are in keeping with all the recommendations of the Program of Action and provide, inter alia, for a strict marking system that enables the competent national authorities to identify and trace the relevant weapons at any time and in a reliable way.

Measures for the destruction of surplus small arms and light weapons, as well as of those which are unserviceable or have been seized in connection with illicit traffic, are carried out on a planned and regular basis. The main method used for the destruction of weapons is to turn them into scrap metal, which is a reliable means of ensuring that they will not be used. Information concerning the quantity of small arms and light weapons destroyed is transmitted to the Organization for Security and Cooperation in Europe (OSCE) on a regular basis.

In pursuance of the special Decree by the President of Ukraine the “Plan of Action to implement the UN Program of Action and the OSCE Document on SALW” was elaborated and met the approval by the Cabinet of Ministers of Ukraine in November 2001. The Plan contains the list of obligations and measures to be taken in accordance with mentioned international documents and defines relevant ministries and other central state authorities (11 in total) responsible for their fulfillment. The Plan is also aimed at developing and improving the existing national legal base and regulations in this field.

Effective export control system

Ukraine attaches particular importance to ensuring effective export control procedures that meet all standing international requirements.

In this sphere Ukraine strictly adheres to the decisions taken by the UN Security Council, Organization for Security and Cooperation in Europe and Wassenaar Arrangement. The UNSC resolutions which impose sanctions regimes are guidelines for the adoption of the relevant legislation and regulations in Ukraine and are strictly implemented by the national authorities. In decision-making process we also take into account the provisions of a Moratorium by the Economic Community of West African States on import, export and manufacture of light

weapons as well as the political principles of the European Union Code of Conduct on Conventional Arms Exports.

Ukraine recognizes important role of both the UN Program of Action and the OSCE SALW Document for their comprehensive approach to the issue of international arms transfers. Particular importance is attached to the OSCE Document, where the State-Parties, having agreed on common export criteria such as respect for human rights, avoidance of armed conflict, and compliance with international agreements, established a detailed set of principles governing the procedures and documentation for the import, export and transit of small arms and light weapons.

Yearly Ukraine conducts a number of meetings and consultations on export control and non-proliferation issues, including SALW, with NATO, EU, the United States of America, Germany, United Kingdom and Russian Federation.

Standing Ukrainian legislation regulating export of conventional weapons, including SALW, and related technologies is in full conformity and compliance with the guidelines and principles described in the above mentioned documents.

The number of national legal acts, adopted by the Parliament, the President and the Cabinet of Ministries, are currently regulating all forms of activity related to the export control, including SALW.

Among those are the Presidential Decrees:

- On the Statute on State export control in Ukraine (# 117 of 13.02.1998);
- On military and technical cooperation with foreign states, export control and military-industrial policy (# 121 of 04.02.1999);
- On measures to improve military and technical cooperation of Ukraine with foreign States (# 422 of 21.04.1999);
- On the procedure for establishing (withdrawing) restrictions on the export of goods in accordance with Ukraine's international obligations (# 861 of 15.07.1999);
- On measures to enhance the effectiveness of military and technical cooperation between Ukraine and foreign States (# 868 of 08.07.2000);
- On State Export Control Service of Ukraine (#1265 of 27.12.2002);
- On separation of powers of central state authorities in the sphere of military and technical cooperation with foreign states (#276 of 20.03.2002);
- On the issues of State Export Control Service of Ukraine (#342 of 17.04.2002);
- On additional measures to improve control in the sphere of international military and technical cooperation (#1207 of 24.12.2002).

And the Decisions by the Cabinet of Ministers of Ukraine:

- On the Statute on the procedure for State monitoring of international transfer of military goods (# 1358 of 08.12.1997);
- On the Statute on the procedure for granting foreign economic agents the right to export and import military goods and goods containing information constituting a State secret (# 838 of 08.06.1998);

- On the Statute on the procedure for State monitoring of negotiations involving the conclusion of foreign economic agreements (contracts) on international transfers of military goods and dual-use goods (# 125 of 08.02.1998);
- On the Statute on the procedure for issuing guarantees and for state monitoring of international transfers of military goods and dual-use goods (# 920 of 27.05.1999).

On February 2003 the “Law of Ukraine On State Control of International Transfers of Goods Designated for Military Purposes and Dual-Use Goods” entered into force. This Law is aimed to govern activities related to state control over international transfers of goods designated for Military Purposes, including small arms and light weapons as well as their parts, materials and equipment specially designed for development and production of SALW, with the purpose of securing Ukraine`s national interests and observance of its international obligations and also to apply measures aimed at avoidance of use of the above mentioned goods for terrorist and other illegal purposes.

This Law covers activities related to international transfers of goods, including intermediary (brokerage) services, production, scientific, technical and other co-operation, their demonstration as exhibits at international fairs and exhibitions with the purpose of advertising, testing, marketing and barter operations with them, performed in accordance with the established procedures by entities involved in international transfers of goods.

Article 4 of the Law outlines principles of State policy in the export control sphere, among which are:

- obligatory observance of international commitments of Ukraine and assuring state control over implementation of international transfers of goods designed for military purpose as well as countering use of the those goods for terrorist and other illegal purposes;
- harmonization of procedures and rules of state export control with international legal norms and practice;
- insuring interaction with international organisations and foreign countries in the sphere of state export controls aimed at strengthening international security and stability.

One of the methods of state control implementation, as outlined in Article 5 of the Law, is application of sanctions to foreign economic activities entities that violated the procedures of international transfers of goods covered by the Law and other legislative acts in the sphere of export control.

Summarized below are national procedures and guidelines governing certain outstanding export control issues.

Granting export permits

The decision to grant or refuse a permit to export goods is taken by the State Export Control Service following its consideration and based on conclusions of an interdepartmental examination. Issues related to the granting of permits are referred to the Committee on Export Control Policy and Military and Technical Cooperation of the Office of the President of Ukraine.

The State Export Control Service invites different ministries and other state authorities to participate in the examination of exporters' applications for the export of conventional weapons and dual-use goods and technologies.

Guidelines followed to assess export license applications

In granting permits for the export of conventional weapons, including SALW, Ukraine pursues appropriate national policy and, in particular, imposes a full (or partial) embargo with respect to countries indicated in Security Council resolutions, recommendations of the General Assembly and decisions of OSCE. In addition, Ukraine fulfils its commitments as a party to the international regulations with respect to export controls.

In examining exporters' applications, Ukraine's export control bodies make use of lists of firms (companies) known throughout the world as violators of the international principles governing the transfer of conventional weapons and dual-use goods.

Effective implementation of export controls

The procedure for obtaining guarantees relating to the end-user of the goods and the place where the goods are to be used provides that the exporter must obtain from the importer:

- reliable information on the end-user, intended use and place of use of the goods specified in the agreement (contract);
- an undertaking to import the goods only into the country specified;
- an undertaking not to re-export the goods to third countries without the prior consent of the exporter and the export-control authorities of Ukraine and the user country.

The requisite undertakings and guarantees by the importer to the exporter may be submitted in the form of an import certificate, an end-user certificate and/or other documents that contain them.

The procedure for drawing up such documents is established by the legislation of the user country.

The authenticity of the documents is verified by the State Export Control Service, the Ministry of Foreign Affairs, the Security Service of Ukraine and other authorized bodies both during the stage at which the exporters' application is

examined and when the goods are transferred. An end-user certificate and an import certificate need not be submitted in cases where special bought-in weapons components and military and special technology for the development, production, utilization and repair of military hardware are exported by Ukrainian industrial enterprises in compliance with international treaties (or agreements) relating to industrial and technological cooperation by industrial defense enterprises with enterprises of the Commonwealth of Independent States.

Control over the arms export negotiations

The set of measures concerning State monitoring of negotiations between export companies and foreign companies in relation to the conclusion of foreign economic contracts on international transfers of military goods and also on the export of dual-use goods to countries against which a partial embargo on deliveries of such goods has been imposed was adopted by decision No. 125 of 4 February 1998 of the Cabinet of Ministers of Ukraine, entitled “Statute on the procedure for State monitoring of negotiations involving the conclusion of foreign economic agreements (contracts) on international transfers of military goods and dual-use goods”.

The State Export Control Service prepares quarterly and half-yearly reports addressed to the President and the Prime Minister on the results of the granting of permits, which include quantitative and qualitative analysis of shipments of goods, including those for which permits were granted and those for which permits were refused.

Judicial and administrative sanctions in case of the national control regime violations

Ukrainian legislation provides for combating violations in the area of international transfers of controlled goods and imposes criminal, administrative, civil or financial penalties on the guilty parties. The Ukrainian acts on the Security Service of Ukraine (art. 2) and on operational investigatory activity (art. 1), of 5 April 1992 and 18 February 1992, respectively, assign law-enforcement agencies the basic tasks of preventing, identifying, halting and exposing crimes through the investigation and establishment of the facts relating to the illegal activities of individuals or groups. The Civil Code of Ukraine (arts. 48, 49 and 50) establishes rules for determining whether or not an agreement meets the requirements of legislation and sets out the material responsibility for parties to an illegal agreement. The provisions of the Customs Code of Ukraine (arts. 103, 111, 113 and 114) set out responsibility for violation of customs rules. Such violations are punishable by monetary penalties (fines), confiscation of property, administrative detention of property and confiscation of documents.

A considerable number of infractions in the field of exports of weapons and dual-use goods are covered by the Criminal Code of Ukraine (arts. 221, 221 (1), 222, 228 (2), 228 (4), 228 (5), 228 (6), 229 and 70).

Section IV of the “Law of Ukraine On State Control of International Transfers of Goods Designated for Military Purposes and Dual-Use Goods” provides for the measures aimed at preventing violations in the export control sphere and outlines responsibilities for legal entities, persons and executive power officials for violations of the standing export control legislation.

State Export Control Service has established instructions for conducting investigations of violations by foreign companies of export-control rules and procedures, as well as the procedure for verifying Ukrainian companies’ compliance with their commitments to use military goods and dual-use goods imported with the provision of State guarantees for their declared purposes.

Information on the Ukraine-NATO cooperation within the NATO/PfP Trust Fund

The decision about the beginning of the first phase of the NATO/Partnership for Peace Trust Fund Project to utilize in Ukraine 133 thousand tonnes of munitions, 1,5 million Small Arms and Light Weapons (SALM) and 1 thousand Man-portable Air Defence Systems (MANPADS) was approved during the meeting of the NATO Political and Military Steering Committee with Partners which was held in Brussels on April 14, 2005. During the meeting the US Department of State and NAMSA representatives introduced “Proposal for destruction of Man-portable Air Defence Systems, Small Arms and Light Weapons and Conventional Ammunition in Ukraine”. This document defines technical, economic and organizational aspects for destruction of 15 thousand tonnes of conventional munitions, 400 thousand Small Arms and Light Weapons and 1 thousand Man-portable Air Defence Systems in Ukraine.

The first phase of the project will last 3 years and will require approximately 27 million US dollars including 8,5 million US dollars from donor-countries. The United States of America will act for Ukraine as Lead Nation for this project.

Some country- members of NATO have already made their contributions into the Trust Fund Project. Among them are: USA – 1.641.000 US dollars, Great Britain – 400.000 pounds, Netherlands – 300.000 euro, Norway – 240.000 euro, Luxembourg – 30.000 euro, Slovakia – 20.000 euro, Bulgaria - 25.000 euro, Lithuania - 11.500 euro, Austria - 30.000 euro. The decision about the EU contribution of 1 mln euro is expected to be taken soon.

According to the NATO/PfP Trust Fund procedures NAMSA has to sign agreements with the USA and Ukraine and collect 30-40% of necessary fund to start the project.

The Implementing Agreement between the Cabinet of Ministers of Ukraine and NATO Maintenance and Supply Organization (NAMSO) for disposal of Man-

portable Air Defence Systems, Small Arms and Light Weapons and Conventional Ammunition was agreed during the working consultations between NATO and Ukraine representatives in Kiev, on July 4, 2005.