

Arms Trade Decree of 20 June 2012: Consolidated version in light of the draft Decree amending and optimising various provisions of the Arms Trade Decree of 15 June 2012

TITLE 1. - General scope and definitions

Article 1. The present Decree regulates a regional matter.

Art. 2. For the purposes of the present Decree, the following definitions shall apply:

1° applicant: a natural or legal person who, whether or not represented by a third party, submits an application for import, export, transit, transfer, prior authorisation or a certificate as a certified person;

2° other materials for military use: goods which, on their own or in combination with one another or with other goods, substances or organisms, can cause serious damage to persons or goods and which can be utilised as a means of committing violence in an armed conflict or a similar situation of violence;

3° consignee: the natural or legal person in the country of destination to whom the goods are transferred, exported or forwarded from Belgium;

4° civilian firearm: a firearm that is imported, exported, forwarded or transferred for purposes other than military or paramilitary use, with the exception of automatic firearms and firearms having a calibre that was classified as a military calibre by the Permanent International Commission for the Proof of Small Arms;

5° defence-related products: the products, including software and technology, that are listed in the Common Military List of the European Union;

6° transit: the transportation of goods that are exclusively brought into the territory of Belgium to be transported to another country via said territory;

6°/1 transit operator: if different from the exporter and the carrier, the natural or legal person, whether or not represented by a third party, who acts as customs agent, shipping agent, forwarding agent or shipping organiser in the transit;

7° end user: at the time when the decision regarding the licence application is made, the last-known natural or legal person to whom the use of the goods to be transferred, exported or forwarded shall be granted;

7°/1 exporter: the natural or legal person, whether or not represented by a third party, who has concluded a contract with the consignee in the country of destination or with the end user in the country of end use and who has the right to decide that the respective goods shall be exported or transferred from the country of dispatch to the country of destination. Where no contract has been concluded, the exporter shall be the person who has the right to decide that the respective goods shall be exported or transferred from the country of dispatch to the country of destination;

8° certified person: a person who has received a certificate from an authority authorised to that end in an EU Member State, which states that said person is reliable and, for example, able to comply with export restrictions concerning defence-related products which they transfer from another Member State within the scope of a licence;

9° sensitive goods: the defence-related products that are entered in the UN Register of Conventional Arms, including the goods which fall within the optional categories of small arms and light weapons;

9°/1 importer: the natural or legal person, whether or not represented by a third party, who has concluded a contract with the consignor in the country of dispatch and who has the right to decide that the respective goods shall be imported or transferred from the country of dispatch to the Flemish Region. Where no contract has been concluded, the application shall be submitted by the person who has the right to decide that the respective goods shall be imported or transferred from the country of dispatch to the country of destination;

10° import: any entry of goods into the EU customs territory via the Belgian territory, including temporary storage, placing into a free zone or free warehouse, placing under a suspension procedure and release for free circulation within the meaning of Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code), with the exception of the cases referred to in Article 2, 6°;

11° country of destination: the country to which the goods are transferred, exported or forwarded from Belgium;

12° country of end use: the country where, at the time of the decision on the licence application, the last known use of the goods to be transferred, exported or forwarded shall take place;

13° ammunition: the whole piece or its components that are used in a firearm, if the possession or acquisition of these components is prohibited or subject to a licence requirement on the basis of the Arms Act of 8 June 2006 and its implementing orders;

14° component: any element or spare element that is specifically designed for a firearm and is subjected to the legally required test, as well as any fittings that, when fitted to a firearm, result in that weapon being classified in a different category;

15° law enforcement equipment: goods that are specially designed or modified for purposes of law enforcement or riot control;

16° transfer : the transfer of one or more civilian firearms, components or ammunition from the territory of one EU Member State to the territory of another Member State within the meaning of Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons and Council Directive 93/15/EEC of 5 April 1993 on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses, and the conveyance of one or more defence-related products from the territory of an EU Member State to the territory of another Member State within the meaning of Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community;

17° export: any departure of goods from the EU customs territory, via the Belgian territory, including the departure of goods requiring a customs declaration and the departure of goods after their storage in a control type I free zone or a free warehouse within the meaning of the Modernised Customs Code, with the exception of the cases stated in Article 2, 6°;

17°/1 carrier: if different from the exporter or importer, the natural or legal person, whether or not represented by a third party, that carries out the import, export, transit or transfer;

18° firearm: a portable barrelled weapon from which a load, bullet or projectile is discharged through explosive propulsion and that is designed or can be modified for this purpose.

Art. 3. § 1. The import, export, transit and transfer of defence-related products, law enforcement equipment, civilian firearms, components and ammunition of which the use, production, development or conveyance is forbidden by or

pursuant to international obligations and commitments of the Flemish Region and Belgium shall be prohibited.

Furthermore, the import and transfer to the Flemish Region of defence-related products, law enforcement equipment, civilian firearms, components and ammunition other than those listed in the first sub-paragraph, and other goods for which possession is prohibited in Belgium on the basis of Arms Act of 8 June 2006 shall be prohibited.

The Government of Flanders shall establish the list of defence-related products, law enforcement equipment, civilian firearms, components, ammunition, and other goods of which the import, export, transit and transfer shall be prohibited.

The import, export, transit or transfer of these goods for the purposes that are allowed by the applicable regulations shall be subject to a licence requirement as referred to in paragraphs 2 and 3.

§ 2. The transfer, import, export and transit of defence-related products, other materials for military use and law enforcement equipment shall be subject to a licence requirement as referred to in Title 2.

§ 3. The transfer, import, export and transit of civilian firearms, components and ammunition shall be subject to a licence as referred to in Title 3.

§ 4. The transfer referred to in paragraphs 2 and 3 from and to the Kingdom of the Netherlands and the Grand Duchy of Luxembourg shall be exempt from the licence requirement.

The transit and transfer of goods as referred to in paragraphs 2 and 3, which are destined for or come from the Kingdom of the Netherlands or the Grand Duchy of Luxembourg, shall be allowed upon presentation of a licence that was granted by the competent Dutch or Luxembourg authorities for the import, export or transfer of the respective goods.

§ 5. In accordance with the Agreement on the European Economic Area and its implementing provisions, and with the agreements on how the States concerned are involved in the implementation, application and development of the Schengen acquis, and its implementing provisions:

1° the import, export and transit referred to in paragraph 2 from and to Norway and Iceland shall be treated in the same way as the transfer and transit from and to another EU Member State; and

2° the import, export and transit referred to in paragraph 3 from and to Norway, Iceland, Liechtenstein and Switzerland shall be treated in the same way as the transfer and transit from and to another EU Member State.

If so required by an amendment to an agreement as referred to in the first sub-paragraph, or its implementing provisions, the Government of Flanders may limit the equal treatment in the first sub-paragraph or extend it to other countries.

Art. 4. § 1. The Government of Flanders shall grant licences, authorisations and certificates as referred to in the present Decree if the applicant has their place of residence or registered office in the Flemish Region.

If the applicant does not have their place of residence or registered office in Belgium, the Government of Flanders shall grant a licence if the import, export, transit or transfer takes place on the territory of the Flemish Region.

§ 2. The following persons shall be severally responsible for the application for licences and for the submission of notifications:

- 1° in the case of import in and transfer to the Flemish Region: the importer and the carrier;
- 2° in the case of export and transfer to another EU Member State: the exporter, the carrier and, if different, the person holding the goods on the Belgian territory;
- 3° in the case of transit: the exporter, the carrier and the transit operator.

In the case referred to in paragraph 1, second sub-paragraph, the applicant shall designate a representative who has a place of residence or registered office in the Flemish Region.

The designation referred to in the second sub-paragraph shall not be necessary if the applicant is:

- 1° a certified person;
- 2° the EU, NATO, UN, IAEA or any other intergovernmental organisation of which the Flemish Region or Belgium is a member;
- 3° a government body or a part of the armed forces of another Member State of the EU or NATO.

In the case referred to in paragraph 1, second sub-paragraph, any party involved in an intended import, export or transit with a place of residence or registered office in the Flemish Region shall inform the applicant of the obligations referred to in the present Decree, where appropriate, and may act as a representative, without prejudice to the application of Article 10.

Art. 5. The person wanting to obtain a licence, authorisation or certificate must submit an application to that end with the unit designated for this purpose by the Government of Flanders.

When handling an application, this unit can require the submission of any relevant documents it deems necessary to obtain useful information on the intended import, export, transit or transfer.

TITLE 2. - Import, export, transit and transfer of defence-related products, other materials for military use and law enforcement equipment

CHAPTER 1. - General principles and terms and conditions

Art. 6. For the purposes of the competences of the Flemish Region, this Title provides for the transposition of Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community.

This Title does not prejudice the provisions of Title 3, Chapter 2. If applicable, the requirements referred to in Article 31 shall also apply to goods falling under the application of this Title.

The requirement referred to in Article 40, § 4 shall also apply to the permanent export of firearms, including their components and ammunition, which fall within the scope of this Title and which are not civilian firearms.

Section 1. - Licence requirement

Art. 7. § 1. A licence as referred to in Article 13 shall be required to transfer defence-related products to other EU Member States.

§ 2. Transferring sensitive goods, as referred to in Article 2, 9°, to the Flemish Region shall require advance notification.

The Government of Flanders can approve a list of other defence-related products, the transfer of which to the Flemish Region shall also require advance notification because they constitute a direct threat to public order or safety.

Based on the notification referred to in the first and second sub-paragraphs, the unit designated by the Government of Flanders shall decide whether it is necessary for the transfer in question that a licence as referred to in Article 18 be required in order to allow an examination according to the criteria referred to in Article 11.

§ 3. The Government of Flanders shall establish the procedure for the application for and granting of these licences, as well as the more detailed rules of said licences and the notification.

Art. 8. § 1. A licence as referred to in Article 21 shall be required for the temporary and permanent export of defence-related products to countries outside of the EU.

The Government of Flanders shall additionally approve a list of law enforcement equipment, the temporary and permanent export of which shall also require a licence as referred to in Article 21.

When establishing this list, the Government of Flanders shall specifically take into account the risk that the law enforcement equipment can be used for internal repression.

§ 2. Subject to the application of paragraph 1, a licence as referred to in Article 21 shall be required for the temporary and permanent export of other materials for military use as referred to in Article 2, 2°.

A list of other materials for military use shall be kept and published on the website of the Flemish public administration.

§ 2/1. In the following cases a licence as referred to in Article 21 shall be required for the transit of the goods referred to in paragraphs 1 and 2:

- 1° the goods are loaded from one mode of transport onto another and it is not a transfer between two EU Member States;
- 2° the goods are unloaded from one mode of transport and subsequently reloaded onto the same mode of transport and it is not a transfer between two EU Member States;
- 3° the exporter, the carrier or the transit operator of the goods or any other party involved in the intended transit is aware or is informed by the unit designated for this purpose by the Government of Flanders of the fact that:
 - (a) the goods are or may be destined for a country which, at the time of the intended transit, is subject to an arms embargo or other restrictive measures imposed by the UN, the EU or the OSCE;
 - (b) the goods are or may be destined for a country for which, at the time of the intended transit, the export and transit licences granted have been suspended or revoked pursuant to Article 43 and as a general measure, or, pursuant to Article 43/1, no transfer, export or transit is authorised by the Government of Flanders with that country as country of destination or end use;
 - (c) the goods are or may be intended for the commission of genocide, crimes against humanity or war crimes, as defined in the international treaties to which Belgium is a party;
 - (d) the transit is or may be contrary to the obligations of the Flemish Region and Belgium as parties to international treaties or as

- members of international regimes in the field of non-proliferation or disarmament;
- (e) the transit constitutes or may constitute a threat to public order or safety or to the essential security interests of the Flemish Region and Belgium or of other member states of the EU or NATO or of friendly countries or allies.

If the exporter, carrier or transit operator of the goods or any other party involved in the intended transit has a reasonable suspicion that the intended transit falls or may fall under one or more of the cases mentioned in the first sub-paragraph, they shall inform the unit which has been designated for this purpose by the Government of Flanders.

By way of derogation from the first sub-paragraph, the cases of transit referred to in the first sub-paragraph, 1° and 2°, shall be permitted on presentation of documents showing the prior consent of the country of origin to the export and the prior consent of the country of destination to the import, or documents showing that the export or import can be carried out without this prior consent, if the transit concerns one of the following types of goods:

- 1° goods the end use of which takes place in another member state of the EEA;
- 2° goods owned by the armed forces of another member state of the EEA and which are forwarded by the armed forces concerned solely for their own use.

The Government of Flanders may determine that the derogation referred to in the third sub-paragraph shall also apply to one or more NATO member countries or Participating States to the Wassenaar Arrangement.

§ 3. A licence as referred to in Article 21 shall be required for the temporary and permanent import of sensitive goods, as referred to in Article 2, 9°, from countries outside of the EU.

The Government of Flanders can adopt a list of other defence-related products and law enforcement equipment, the temporary and permanent import of which also requires a licence as referred to in Article 21 because these constitute a direct threat to public order or safety.

§ 4. The Government of Flanders shall establish the procedure for the application for and granting of these licences and the more detailed rules thereof.

Art. 9. § 1. Any person can submit an application to the unit designated by the Government of Flanders to obtain a preliminary opinion on the permissibility of a particular import, export, transit or transfer. Such a preliminary opinion shall entail a declaration that the details of the import, export, transit or transfer were examined and shall comprise a relevant positive or negative assessment.

The opinion referred to in the first sub-paragraph shall be purely informative, does not bind the Flemish Region in any way and cannot be regarded as permission to perform the import, export, transit or transfer.

§ 2. Pursuant to a particular export or transit, any person can request a written confirmation from the unit designated by the Government of Flanders that their goods do not fall within the application of Article 8, § 2.

§ 3. The Government of Flanders shall establish the procedure for obtaining such an opinion and written confirmation and lay down the more detailed rules for this.

Section 2. - General terms and conditions and criteria for the granting and usage

Subsection 1. - Prior authorisation for export, transit or transfer to another EU Member State

Art. 10. § 1. Any applicant or, if the applicant does not have a place of residence or registered office in Belgium, their representative who has a place of residence or registered office in the Flemish Region, who wants to permanently export or forward to a country outside of the EU or permanently transfer to another EU Member State defence-related products, other materials for military use or law enforcement equipment in accordance with the provisions of this Title must hold a prior authorisation which allows them to perform export, transit or transfer activities.

§ 2. The authorisation referred to in paragraph 1 shall be granted after it has been established that the applicant has the necessary morality and reliability to exercise activities relating to defence-related products, other materials for military use and law enforcement equipment.

When assessing the applicant's morality, account shall be taken of the punishable acts committed by the applicant, and, if the applicant is a legal person, any director, manager, commissioner of the legal person and any person holding special authorisation of the legal person who is responsible for import, export, transit and transfer, which were recorded in an official report or which led to a criminal conviction or a measure entailing discontinuance of the criminal proceedings, and an opinion can be requested from the public prosecutor of the district where the applicant is located, from State Security, from the General Administration of Customs and Excise Duties of the FPS Finance and from the federal police.

The assessment of the reliability of the applicant shall take into account the in-house programme of compliance with the transfer and export control procedure or the export management system of the applicant and, if the applicant is a legal person, the appointment of a board member of the applicant who is personally responsible for import, export, transit and transfer.

The Government of Flanders shall establish the procedure for the application for and granting of the prior authorisation and the more detailed rules thereof and the procedure for the morality and reliability examination.

§ 3. The prior authorisation shall be valid indefinitely, but shall be evaluated every three years, to be calculated as from the time at which the authorisation is granted.

§ 4. Prior authorisation shall not be necessary if the person referred to in paragraph 1 is:

- 1° holder of a certificate of accreditation as an arms dealer;
- 2° a certified person;
- 3° the EU, NATO, UN, IAEA or any other intergovernmental organisation of which the Flemish Region or Belgium is a member;
- 4° a government body or a part of the armed forces of another member state of the EU or NATO.

Subsection 2. - Criteria for import in and transfer to the Flemish Region

Art. 11. Any application for import or transfer as referred to in Article 7, § 2 and Article 8, § 3 shall be denied if there is a clear risk that the goods in question:

1° are allocated a purpose other than that stated in the application or are re-exported or re-transferred under undesirable conditions;
2° constitute a threat to public order or safety.

Subsection 3. - Terms and conditions for the granting and usage of specific licences

Art. 12. § 1. The issue of licences as referred to in Articles 13 and 21 can be made subject to certain terms and conditions and restrictions relating to the granting and use thereof, which are targeted at furthering compliance with the provisions of the present Decree and its implementing provisions.

These terms and conditions and restrictions can relate to the following elements:

- 1° the end use of the respective goods;
- 2° the re-export or export after the respective goods have been transferred;
- 3° the transport and customs clearance of the respective goods;
- 4° the physical verification of the respective goods;
- 5° reports on the use of the respective licence as referred to in Article 49.

§ 2. The terms and conditions and restrictions referred to in paragraph 1 shall be disclosed no later than at the moment that the licence is issued to the applicant.

The applicant shall immediately notify the consignee of any restrictions on the end use of the goods or on the re-export or export after they have been transferred.

The applicant shall keep written proof of the notification referred to in the second sub-paragraph.

§ 3. The Government of Flanders shall lay down the more detailed rules for the imposition of the terms and conditions and restrictions referred to in paragraph 1.

CHAPTER 2. - Transfer of defence-related products within the European Union

Section 1. - Types of licences

Art. 13. There are three types of licences for the transfer of defence-related products to another EU Member State: general licences, global licences and individual licences.

Art. 14. § 1. A person who complies with the terms and conditions laid down in a general licence can, on the grounds of said general licence, transfer defence-related products to other EU Member States in the cases referred to in paragraph 2.

§ 2. A general licence shall only be provided for the following cases:

1° the consignee is part of the armed forces of another EU Member State or is a contracting authority in the field of defence that makes purchases to be used exclusively by the armed forces of said Member State;

2° the consignee is a certified person;

3° the defence-related products are temporarily transferred for demonstration, evaluation or exhibition purposes;

4° the defence-related products are temporarily transferred to the original supplier for maintenance or repairs or are re-transferred to the original consignee after they have been given a maintenance service or were repaired in the Flemish Region;

5° the transfer is necessary within the framework of an intergovernmental cooperation programme between EU Member States for the development, production and use of one or more defence-related products.

§ 3. When granting a certificate as a certified person to applicants established in the Flemish Region, the Government of Flanders shall assess the applicants' reliability on the basis of the following elements:

1° the applicant's proven experience in defence activities, whereby particular account is taken of the applicant's compliance with export restrictions, any relevant criminal convictions, permission to manufacture or place on the market defence-related products and the presence of experienced management personnel;

2° the applicant's relevant industrial activity in defence-related products within the EU, in particular the capacity to integrate systems and subsystems;

3° the appointment of a board member of the applicant who is personally responsible for transfer and export;

4° a written declaration signed by said board member in which it is stated that the applicant:

a) shall take all the necessary measures to meet all the particular terms and conditions and restrictions applicable to the end use and export of each specific component or product purchased;

b) shall give the competent authorities, with due diligence, detailed information, upon request and for purposes of examination, about the end users or the end use of all the products that the company has exported, transferred or purchased within the framework of a general licence from another Member State;

5° a description of the in-house programme of compliance with the transfer and export control procedure or the export management system of the applicant which is signed by said board member and contains information about the following elements:

a) the organisational, human and technical resources to manage transfers and exports;

b) the chain of command;

c) internal auditing procedures;

d) awareness-raising and training measures for the personnel;

e) physical and technical safety and security measures;

f) registration and traceability of transfers and exports.

The Government of Flanders shall establish the procedure for the application for and granting of this certificate, and specify the more detailed rules for the certificate and elements stated.

§ 4. General licences shall specify the defence-related products or product categories for which they are granted.

General licences for transfer to certified persons, referred to in paragraph 2, second sub-paragraph, shall not under any circumstances be granted for the transfer or sensitive goods referred to in Article 2, 9°.

§ 5. General licences shall be published on the website of the Flemish public administration.

§ 6. Before a person can use a general licence, they must register with the unit designated for that purpose by the Government of Flanders.

The unit designated for this purpose by the Government of Flanders can deny the registration if there are sound reasons to assume that the person in question does not have the proportional and appropriate resources and procedures to be able to comply with the obligations which, as far as transfer control and reporting as referred to in Articles 12 and 49 are concerned, are related or can be related to the use of the general licence.

§ 7. If there is a clear risk that a certified person in another EU Member State is the consignee within the scope of a general licence and that such person will not meet the terms and conditions associated with the general licence or poses a threat to public order and safety or to the fundamental security interests of the Flemish Region or Belgium, the other Member State shall be notified of this and a request shall be made to verify the situation.

If there is persisting doubt after the verification by the other Member State, then, in application of Article 43, the use of the general licence referred to in paragraph 2, 2° can be restricted with respect to the person concerned.

Art. 15. § 1. In cases not referred to in Article 14, § 2 a person can apply for a global licence to transfer particular defence-related products or product categories to particular consignees in one or more EU Member States.

In the cases referred to in Article 14, § 2 persons who do not comply with the terms and conditions set out in the accompanying general licence can also apply for a global licence.

§ 2. The licence shall specify for which defence-related products or product categories and for which consignees the global licence is granted.

§ 3. Use of the global licence shall not be allowed if there are sound reasons to assume that the applicant does not have the proportional and appropriate resources and procedures to be able to comply with the obligations which, as far as transfer control and reporting as referred to in Articles 12 and 49 are concerned, are associated or can be associated with the use of a global licence.

Art. 16. A person can apply for an individual licence for one particular transfer of a particular number of specified defence-related products that will be transferred in one or more consignments to one consignee in another EU Member State.

They must do this in any event in the following cases:

- 1° the application is limited to one transfer;
- 2° the application concerns a transfer for purposes allowed of goods of which transfer is prohibited on the grounds of Article 3, § 1;
- 3° the unit designated by the Government of Flanders is of the opinion that this is essential for the protection of the fundamental security interests of the Flemish Region and Belgium, or for reasons of public order or safety;
- 4° this unit is of the opinion that this is essential to comply with the international obligations and commitments of the Flemish Region and Belgium;
- 5° use of the general and global licences is not allowed in application of Article 14, § 6 and Article 15, § 3.

Art. 17. A particular transfer of defence-related products to another EU Member State can be exempt from the licence requirement in the following cases:

- 1° the applicant is a government body or a part of the armed forces of another member state of the EU or NATO;
- 2° the applicant is the EU, NATO, IAEA, UN or any other intergovernmental organisation of which the Flemish Region or Belgium is a member;
- 3° the transfer is connected with humanitarian disaster aid or is part of an emergency donation.

Art. 18. An individual licence must be applied for in the case of transfer of one or more consignments to the Flemish Region of goods of which transfer is prohibited on the grounds of Article 3 and of defence-related products for which

the unit designated by the Government of Flanders requires a licence on the grounds of Article 7, § 2.

Section 2. - Special terms and conditions and criteria for issue and usage

Subsection 1. - Proof of end use in the case of transfer to other EU Member States

Art. 19. § 1. For any application for an individual or global licence and up to the time at which the decision is made in this regard, the applicant shall communicate any information relating to the end user and end use of the respective goods.

§ 2. Without prejudice to the application of the relevant obligations and commitments of the Flemish Region and Belgium, the applicant shall enclose with their application a declaration from the end user and, if applicable, an international import certificate or a copy of the import licence.

The Government of Flanders shall establish more detailed rules for the declaration from the end user.

§ 3. The unit designated by the Government of Flanders can demand additional guarantees for the end use for each transfer, such as a verification of the end user or additional information, or relevant commitments on the part of the consignee or end user.

If the country of end use is not a member state of the EU or NATO, a declaration from the end user shall in any case be required, stating that they undertake to apply for the permission of the Government of Flanders for any re-export if the unit is of the opinion that:

1° the end use or end user could give cause for concern regarding an unwanted change of purpose or destination or an undesired re-export;

2° the transfer concerns sensitive goods.

The Government of Flanders can determine that the obligation in the second sub-paragraph shall not apply to one or more Participating States to the Wassenaar Arrangement.

3° the export control policy and the effectiveness of the export control system of the given country of end use outside of the EU could give cause for concern.

§ 4. If, during the validity period of their licence for transfer, the applicant for an individual or global licence obtains information on the change of purpose or destination or of the export of goods that they actually transferred on the basis of such a licence, they shall send a notification of this to the unit designated for that purpose by the Government of Flanders.

Art. 19/1. Persons applying for an individual or global licence for defence-related products previously transferred or imported from another country and subject to transfer or export terms and conditions or transfer or export restrictions shall attach to their application documents showing that they have complied with the terms and conditions and restrictions, including, where appropriate, the fact that they have obtained the required consent to the transfer from the country of origin.

Subsection 2. - Criteria for transfer to other EU Member States

Art. 20. If, at the moment that the decision is made on an application for a global or individual licence, referred to in Articles 15 and 16, it is established that the end use of the goods takes place outside of the EU, the application shall be verified against the criteria referred to in Articles 26 and 28 and the global or

individual licence can be denied on those grounds or it can be subjected to the terms and conditions or restrictions relating to the end use or export, as referred to in Article 12.

The licence can in any case be denied if there is a clear risk that the respective goods:

- 1° are allocated a purpose other than that stated in the application or are re-exported or re-transferred under undesirable conditions;
- 2° constitute a threat to public order or safety or to the essential security interests of the Flemish Region and Belgium or of other member states of the EU or NATO or of friendly countries or allies.

CHAPTER 3. - Import, export and transit of defence-related products, other materials for military use and law enforcement equipment from and to countries outside of the European Union

Section 1. - Types of licences

Art. 21. There are two types of licences for the import, export and transit of defence-related products and law enforcement equipment and for the export and transit of other materials for military use: individual licences and combined licences.

Art. 22. A person can apply for an individual licence for one specific case of export or transit of a particular number of specified defence-related products, other materials for military use or law enforcement equipment, in one or more consignments, to a single consignee.

A person can apply for an individual licence for one specific case of import of a particular number of specified defence-related products or law enforcement equipment, in one or more consignments, from a single consignor.

An individual licence must be applied for in the case of the import of goods of which import is prohibited on the grounds of Article 3.

Art. 23. A person can apply for a combined licence for the export of particular defence-related products, other materials for military use or law enforcement equipment to one or more particular consignees in one and the same country.

A person can apply for a combined licence for the import of particular defence-related products or law enforcement equipment from one or more particular consignors in one and the same country.

The terms and conditions referred to in Article 24 must be met for export to any consignee.

The licence shall specify for which defence-related products, other materials for military use or law enforcement equipment and for which consignors or consignees the combined licence shall be granted.

Section 2. - Special terms and conditions and criteria for issue and usage

Subsection 1. - Proof of end use in case of export and transit

Art. 24. § 1. For any application for export or transit and up to the time at which the decision is made in this regard, the applicant shall provide any information relating to the end user and end use of the respective goods.

§ 2. Without prejudice to the application of the relevant obligations and commitments of the Flemish Region and Belgium, the applicant shall enclose with their application a declaration from the end user and, if applicable, an international import certificate or a copy of the import licence.

The Government of Flanders shall establish more detailed rules for the declaration from the end user.

§ 3. The unit designated by the Government of Flanders can demand additional guarantees for the end use for each export or transit, such as a verification of the end user or additional information, or relevant commitments on the part of the consignee or end user.

If the country of end use is not a member state of the EU or NATO, a declaration from the end user shall in any case be required, stating that they shall undertake to apply for the permission of the Government of Flanders for any re-export if the unit is of the opinion that:

1° the end use or end user could give cause for concern regarding an unwanted change of purpose or destination or an undesired re-export;

2° the export or transit concerns sensitive goods;

3° the export control policy and the effectiveness of the export control system of the country of destination or the country of end use could give cause for concern.

The Government of Flanders can determine that the obligation in the second sub-paragraph shall not apply to one or more Participating States to the Wassenaar Arrangement.

§ 4. A document shall be enclosed with each application for transit, which shows that the competent authorities of the country of origin of the goods consented to the export, if the object of the application was subject to an export licence in the country of origin.

The document referred to in the first sub-paragraph does not have to be provided, if the transit takes place within the scope of the exercise of the tasks of the EU, NATO, UN, IAEA or any other intergovernmental organisation of which Flanders or Belgium is a member, or if the transit is linked to humanitarian disaster aid or is part of an emergency donation.

§ 5. If, during the validity period of their licence for export or transit, the applicant obtains information on the change of purpose or destination or of the re-export of goods that they actually exported or forwarded on the grounds of said licence, they shall notify the unit designated for this purpose by the Government of Flanders of this.

Art. 25. Persons applying for a licence for goods previously transferred or imported from another country and subject to transfer or export terms and conditions or transfer or export restrictions shall attach to their application documents showing that they have complied with the terms and conditions and restrictions, including, where appropriate, the fact that they have obtained the required consent to the transfer from the country of origin.

Subsection 2. - Criteria in case of export and transit

Art. 26. § 1. Each application for export or transit shall be verified against the following criteria on the basis of Article 2 of the Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment. These criteria comprise:

1° Respect for the international obligations and commitments of Belgium, in particular the sanctions adopted by the UN Security Council or the EU, agreements on non-proliferation and other subjects, as well as other international obligations

2° Respect for human rights in the country of end use as well as respect by that country of international humanitarian law

3° Internal situation in the country of end use, as a function of the existence of tensions or armed conflicts

4° Preservation of peace, security and stability in the recipient region

5° National security of the Flemish Region and Belgium, of the EU Member States, of territories whose external relations are the responsibility of one of the Member States, as well as that of friendly or allied countries

6° Behaviour of the country buying the goods or technology with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law

7° Existence of a risk that the goods or technology in question will be diverted within the country of destination or the country of end use or re-exported under undesirable conditions

8° Compatibility of the supplied goods or technology in question with the technical and economic capacity of the country of end use, 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.

§ 2. In light of the first criterion referred to in paragraph 1, 1° the licence shall be denied if the granting thereof is in violation of, inter alia:

1° Belgium's international obligations and its commitment to enforce UN, EU and OSCE arms embargoes;

2° Belgium's international obligations under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention, the Chemical Weapons Convention, the Convention on Cluster Munitions and the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction;

3° Belgium's commitments 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.

§ 3. In light of the second criterion referred to in paragraph 1, 2° the attitude of the country of end use towards important principles established by international human rights instruments and towards important principles established by international humanitarian law shall be assessed.

The licence shall be denied if the application concerns goods that might be used for internal repression and the relevant competent bodies of the UN, Council of Europe, EU or any other intergovernmental organisation of which the Flemish Region or Belgium is a member have established, with regard to the end user, serious violations of international humanitarian law or of human rights which may potentially be violated as a result of the use of defence-related products, other materials for military use or law enforcement equipment.

Regardless of the end user, the licence shall be denied if there is a clear risk that the goods or technology in question might be used in the commission of serious violations of human rights or international humanitarian law or to facilitate or promote such violations.

§ 4. In light of the third criterion referred to in paragraph 1, 3° the licence shall be denied if the application concerns goods that can be used in an armed conflict and the end user is a party involved in an internal armed conflict in the country of end use, subject to the relevant obligations and commitments of the Flemish

Region and Belgium in respect of the EU, NATO and their member states, and in respect of the UN and any other intergovernmental organisations of which the Flemish Region or Belgium is a member, and subject to the necessity to comply with the legitimate national security needs of the EU Member States, of territories for which the external relations are the responsibility of one of the Member States, as well as of friendly or allied countries, without prejudicing the second criterion relating to respect for human rights and international humanitarian law.

Regardless of the end user, the licence shall be denied if there is a clear risk that the goods or technology in question could provoke internal armed conflicts or domestic tensions or prolong or aggravate existing armed conflicts or tensions.

The greatest caution shall also be applied to applications for countries where there are internal tensions.

§ 5. In light of the fourth criterion referred to in paragraph 1, 4° the licence shall be denied if the application concerns goods that can be used in an armed conflict and the end user is a party involved in a regional armed conflict, subject to the relevant obligations and commitments of the Flemish Region and Belgium in respect of the EU, NATO and their member states, and in respect of the UN and any other intergovernmental organisations of which the Flemish Region or Belgium is a member, Article 51 of the Charter of the United Nations and the necessity to comply with the legitimate national security needs of the EU Member States, of territories whose external relations are the responsibility of one of the Member States, as well as of friendly or allied countries, without prejudicing the criterion referred to in paragraph 1, 2° relating to respect for human rights and international humanitarian law.

Regardless of the end user, the licence shall be denied if there is a clear risk that the goods or technology in question could provoke an armed conflict or tensions in the region or prolong or aggravate existing armed conflicts or tensions.

The greatest caution shall be applied to applications for countries in a region where there are tensions.

§ 6. In light of the fifth criterion referred to in paragraph 1, 5° the licence shall be denied if there is a clear risk that the proposed export or transit would directly or indirectly threaten the defence and security interests of the Flemish Region and Belgium or other member states of the EU or NATO or of friendly or allied countries or that the goods or technology in question would be used against their own forces or those of other member states of the EU or NATO, or of friendly or allied countries.

§ 7. In light of the sixth criterion referred to in paragraph 1, 6° it shall be examined whether the country of end use has supported or encouraged terrorism or international organised crime in the past, has complied with its international commitments and has committed to non-proliferation and other areas of arms control and disarmament, in particular by signing, ratifying and implementing the treaties and conventions referred to in paragraph 2, 2°.

The licence shall in any event be denied if the respective competent bodies of the UN, the Council of Europe, the EU or any other intergovernmental organisation of which the Flemish Region or Belgium is a member have established that the country of end use supports or encourages terrorism or international organised crime or systematically or manifestly does not comply with its international obligations and commitments regarding the ban on the use of force as referred to in Article 2 of the Charter of the United Nations, international humanitarian law, non-proliferation and disarmament.

§ 8. In light of the seventh criterion referred to in paragraph 1, 7° account shall be taken of the legitimate defence and domestic security interests of the country of end use, including any participation in UN or other peace-keeping activity; of the technical capability of the country of end use to use such goods or technology; of the capability of the country of end use to apply effective export controls with the risk of such goods or technology being re-exported to undesirable destinations and of the record of the country of end use in respecting any re-export provision or consent prior to re-export imposed in the past, with the risk of such goods or technology being diverted to terrorist organisations or to individual terrorists and with the risk of unintended technology transfer.

The licence shall in any event be denied if there is a clear risk that the goods or technology in question would be diverted from their purpose or destination or would be re-exported in a manner that is contrary to the provisions of the present Decree or its implementing provisions.

The licence shall be denied all the more so if there is a clear risk that the goods or technology in question would end up with persons for whom serious violations of human rights or of international humanitarian law have been established by the respective competent bodies of the UN, the Council of Europe, the EU or any other intergovernmental organisation of which the Flemish Region or Belgium is a member, or such persons are involved in an internal or regional armed conflict, as referred to in the criteria listed in paragraph 1, 2°, 3° and 4°.

§ 9. In light of the eighth criterion referred to in paragraph 1, 8° it shall be examined whether the proposed export or transit would seriously hamper the sustainable development of the country of end use and account shall be taken of the financial value of the respective export or transit and of the levels of military expenditure of the recipient country with respect to the social expenditure, including any EU or bilateral aid.

Art. 27. The export and transit licences that were denied on the grounds of the criteria referred to in Article 26 and the reasons for the denial shall be communicated to the other EU Member States.

Before a licence that has been denied by one or more other EU Member States for an essentially identical transaction within the last three years is granted, the said Member State(s) shall be consulted. Such consultation shall be used as a basis for the decision to also deny the licence or nevertheless grant it. If, following said consultation, it is nevertheless decided to grant a licence, the Member State(s) issuing the original denial(s) shall be notified and be given a detailed explanation of the reasons.

The denials and consultations shall remain confidential in accordance with the provisions of the Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment.

Art. 28. Besides the cases referred to in Article 26, any application for export or transit can also be denied, taking into account the following criteria:

1° the external interests and international objectives of the Flemish Region and Belgium; for example, an application shall be denied if it is established that the granting of a licence is contrary to a measure imposed pursuant to Article 43/1;

2° the rights of children in the country of end use; for example, an application shall be denied if it is established that child soldiers are being used in the regular armed forces;

3° the attitude of the country of end use towards capital punishment; for example, an application shall be denied if there is a clear risk that the goods or

technology in question could be used to administer the death penalty or to facilitate or promote such administration;

4° the prevalence of a high level of fatal victims following firearms violence in the country of end use;

5° the prevalence of gender-related violence, in particular rape and other forms of sexual violence;

6° the presence of initiatives regarding peace-building and reconciliation processes.

TITLE 3. - Import, export, transit and transfer of civilian firearms, components and ammunition

CHAPTER 1. - General principles and terms and conditions

Art. 29. As far as the competences of the Flemish Region are concerned, this Title shall provide for the transposition of Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons and Council Directive 93/15/EEC of 5 April 1993 on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses.

This Title shall also lay down rules on the export of civilian firearms, components and ammunition, in accordance with Articles 3, 4, 7, 8, 9, 10 and 11 of Firearms Regulation 258/2012.

Section 1. - Licence requirement

Art. 30. § 1. A licence shall be required for the temporary and permanent import, export and transfer of all categories and types of civilian firearms, and for their components and ammunition.

In the following cases, a licence shall also be required for the transit of the goods referred to in the first sub-paragraph:

- 1° the goods are loaded from one mode of transport onto another and it is not a transfer between two EU Member States;
- 2° the goods are unloaded from one mode of transport and subsequently reloaded onto the same mode of transport and it is not a transfer between two EU Member States;
- 3° the exporter, the carrier or the transit operator of the goods or any other party involved in the intended transit is aware or is informed by the unit designated for this purpose by the Government of Flanders of the fact that:
 - (a) the goods are or may be destined for a country which, at the time of the intended transit, is subject to an arms embargo or other restrictive measures imposed by the UN, the EU or the OSCE;
 - (b) the goods are or may be destined for a country for which, at the time of the intended transit, the export and transit licences granted have been suspended or revoked pursuant to Article 43 as a general measure, or, pursuant to Article 43/1, no transfer, export or transit is authorised by the Government of Flanders with that country as country of destination or end use;
 - (c) the goods are or may be intended for the commission of genocide, crimes against humanity or war crimes, as defined in the international treaties to which Belgium is a party;
 - (d) the transit is or may be contrary to the obligations of the Flemish Region and Belgium as parties to international treaties or as members of international regimes in the field of non-proliferation or disarmament;
 - (e) the transit constitutes or may constitute a threat to public order or safety or to the essential security interests of the Flemish Region

and Belgium or of other member states of the EU or NATO or of friendly countries or allies.

If the exporter, carrier or transit operator of the goods or any other party involved in the intended transit has a reasonable suspicion that the intended transit falls or may fall under one or more of the cases mentioned in the first sub-paragraph, they shall inform the unit which has been designated for this purpose by the Government of Flanders.

By way of derogation from the second sub-paragraph, the cases of transit referred to in the first sub-paragraph, 1° and 2°, shall be permitted on presentation of documents showing the prior consent of the country of origin to the export and the prior consent of the country of destination to the import, or of documents showing that the export or import can be carried out without this prior consent, if the transit concerns one of the following types of goods:

- 1° goods the end use of which takes place in another Member State of the EEA;
- 2° goods owned by the armed forces of another member state of the EEA and which are forwarded by the armed forces concerned solely for their own use.

The Government of Flanders may determine that the derogation referred to in the fourth sub-paragraph shall also apply to one or more NATO member countries or Participating States to the Wassenaar Arrangement.

§ 2. The Government of Flanders can establish a list of civilian firearms, components and ammunition that can be imported, exported, forwarded and transferred without a licence because they do not constitute a direct threat to public order or safety.

This list must not contain any civilian firearms, components and ammunition, the possession or acquisition of which is prohibited or subject to licensing on the grounds of the Arms Act of 8 June 2006 and its implementing orders.

§ 3. The Government of Flanders shall establish the procedure for the application for and granting of these licences and the more detailed relevant rules.

Section 2. General terms and conditions and criteria for issue and usage

Subsection 1. - Legal possession

Art. 31. § 1. The import, export, transit and transfer of civilian firearms, components and ammunition shall only be authorised if, on the grounds of the Arms Act of 8 June 2006 and its implementing orders, the applicant is entitled to possess or acquire the firearm, component or ammunition.

§ 2. The import, export, transit and transfer of civilian firearms, components and ammunition shall also only be granted if all their essential properties are known.

Essential properties, referred to in the first sub-paragraph, shall be understood to mean the nature, category, brand, model, calibre and serial number.

By way of derogation from the first sub-paragraph, the import, export, transit or transfer shall be authorised in the following cases without specifying the serial numbers concerned, provided that they are communicated to the unit

designated for this purpose by the Government of Flanders no later than two working days before each consignment on the basis of the licence granted:

- 1° the civilian firearms, components or ammunition have been ordered from the manufacturer and are still in production;
- 2° the civilian firearms, components or ammunition will be acquired within the framework of an auction or fair.

Subsection 2. - Criteria for import in and transfer to the Flemish Region

Art. 32. Any application for a licence for import or transfer shall be denied if there is a clear risk that the goods in question:

- 1° will be allocated a purpose other than that stated in the application or will be re-exported or re-transferred under undesirable conditions;
- 2° constitute a threat to public order or safety.

Subsection 3. - Terms and conditions subject to which specific licences are granted and used

Art. 33. § 1. The issue of licences as referred to in Articles 34 and 38 can be made subject to certain terms and conditions and restrictions relating to the granting and use thereof, which are targeted at encouraging compliance with the provisions of the present Decree and its implementing provisions.

These terms and conditions and restrictions can relate to the following elements:

- 1° the end use of the goods in question;
- 2° re-export or export after the respective goods have been transferred;
- 3° the transport and customs clearance of the respective goods;
- 4° the physical verification of the respective goods;
- 5° reports on the use of the respective licence as referred to in Article 49.

§ 2. The terms and conditions and restrictions referred to in paragraph 1 shall be disclosed no later than at the moment that the licence is issued to the applicant.

The applicant shall immediately notify the consignee of restrictions on the end use of the goods or on the re-export or export after they have been transferred.

The applicant shall keep written proof of the notification referred to in the second sub-paragraph.

§ 3. The Government of Flanders shall lay down more detailed rules for the imposition of the terms and conditions and restrictions referred to in paragraph 1.

CHAPTER 2. - Transfer of civilian firearms, components and ammunition within the European Union

Section 1. - Types of licences

Art. 34. For the transfer of civilian firearms, components and ammunition in one or more consignments an individual licence must each time be applied for.

Art. 35. § 1. By way of derogation from Article 34, persons in possession of a European Firearms Pass, referred to in the Royal Decree of 8 August 1994 on European Firearms Passes, can transfer the firearm(s) listed therein, the accompanying components and a proportional amount of ammunition, without a licence, for the term of their hunting or target shooting activities from and to EU Member States, on the condition that they can show, by means of an invitation or

other proof, that they are actually transferring the firearms to participate in hunting or target shooting activities.

§ 2. On the grounds of a prior notification and for the duration of the respective activities, persons in possession of a European Firearms Pass can also, during the term of validity of their Firearms Pass, transfer the firearm(s) stated therein and the accompanying components from and to EU Member States for demonstration or exhibition purposes, without sale, and for purposes of maintenance, evaluation and repairs, on the condition that they can submit proof that shows that they are actually transferring the firearms for said activities.

The Government of Flanders shall establish more detailed rules for such notifications.

Art. 36. § 1. By way of derogation from Article 34, persons who hold the certificate of accreditation as an arms dealer can obtain an open licence that allows them for a period of three years on the grounds of the Arms Act of 8 June 2006 to transfer firearms that are subject to licensing and freely available firearms that are not exempt from a transfer licence by the Government of Flanders, and their components and ammunition on the grounds of a prior notification, to an arms dealer who is established in an EU Member State, or to temporarily transfer them for demonstration or exhibition purposes, without sale, and for purposes of maintenance, evaluation and repairs, for the duration of the respective activities, from and to EU Member States, provided they can present proof showing that they actually transfer the goods for said activities.

The Government of Flanders shall establish more detailed rules for this open licence and notification.

Section 2. - Special terms and conditions and criteria for issue and usage

Art. 37. With every application for a licence for transfer to another EU Member State, a document shall be enclosed which shows the prior consent of that Member State to the said transfer, or shows that the licence as referred to in Article 34 can be granted without said prior consent.

CHAPTER 3. - Import, export and transit of civilian firearms, components and ammunition from and to countries outside of the European Union

Section 1. - Types of licences

Art. 38. For the import, export and transit of civilian firearms, components and ammunition in one or more consignments, an individual licence must each time be applied for.

Art. 39. § 1. By way of derogation from Article 38, persons in possession of a European Firearms Pass, referred to in the Royal Decree of 8 August 1994 on European Firearms Passes, can temporarily import or export the firearm(s) listed therein, the accompanying components and a proportional amount of ammunition to or from countries outside of the EU during the validity period of their Firearms Pass, on the grounds of a prior notification and for the term of their hunting or target shooting activities, on the condition that they can show, by means of an invitation or other proof, that they are actually exporting the firearms to participate in hunting or target shooting activities.

On the grounds of prior notification and for the duration of the respective activities, persons in possession of a European Firearms Pass can also, during the term of validity of their Firearms Pass, temporarily import or export the firearm(s) listed therein and the accompanying components to or from countries

outside of the EU for demonstration or exhibition purposes, without sale, and for purposes of maintenance, evaluation, repairs and temporary storage, on the condition that they can submit proof that shows that they are actually importing or exporting the firearms for said activities.

For persons who have their place of residence in Belgium, the first and second sub-paragraphs shall also apply if they only possess a title on the grounds of which they are entitled to possess the respective firearms in accordance with the Arms Act of 8 June 2006 and its implementing orders.

The Government of Flanders shall establish more detailed rules for such notification.

§ 2. By way of derogation from Article 38, persons in possession of the open licence referred to in Article 36, § 1, may, on the grounds of prior notification and for the duration of the activities concerned, temporarily import and export firearms which are subject to licensing and freely available firearms which are not exempted from the licence for import and export by the Government of Flanders, and components and ammunition thereof, for demonstration or exhibition purposes, without sale, and for purposes of maintenance, evaluation, repairs and temporary storage, on the condition that they can present proof that shows that they are actually importing or exporting the goods for said activities.

The Government of Flanders shall establish more detailed rules for the notification referred to in the first sub-paragraph.

Section 2. - Special terms and conditions and criteria for issue and usage

Subsection 1. - Proof of end use in case of export and transit

Art. 40. § 1. For any application for export or transit and up to the time at which the decision is made in this regard, the applicant shall communicate any information relating to the end user and end use of the goods in question.

§ 2. The applicant shall enclose with their application a document showing the consent to the import of the country of destination, such as an international import certificate or a copy of the import licence.

If this does not show from the document referred to in the first sub-paragraph, the applicant shall enclose with their application a declaration from the end user.

The Government of Flanders shall establish more detailed rules for the declaration from the end user.

§ 3. The unit designated by the Government of Flanders can demand additional guarantees for the end use for each export or transit, such as a verification of the end user or additional information, or relevant commitments on the part of the consignee or end user.

If the country of end use is not a member state of the EU or NATO a declaration from the end user shall in any case be required, stating that it undertakes to apply for the permission of the Government of Flanders for any re-export if the unit is of the opinion that:

1° the end use or end user could give cause for concern regarding an unwanted change of purpose or destination or an undesired re-export;

2° the export control policy and the effectiveness of the export control system of the country of destination or the country of end use could give cause for concern.

The Government of Flanders can determine that the obligation in the second sub-paragraph shall not apply to one or more Participating States to the Wassenaar Arrangement.

§ 4. With each application for permanent export a document shall be enclosed showing the consent of the countries of transit, if any, with the exception of the EU Member States.

If the unit designated by the Government of Flanders has not received any objection to the transit within twenty working days following a written request for consent from the competent authorities in the countries of transit, then the consent shall be deemed to have been given.

§ 5. With each application for transit a document shall be enclosed which shows that the competent authorities of the country of origin of the goods have consented to the export, if the object of the application was subject to an export licence in the country of origin.

The document referred to in the first sub-paragraph does not have to be provided if the transit takes place within the scope of the exercise of the tasks of the EU, NATO, UN, IAEA or any other intergovernmental organisation of which Flanders or Belgium is a member, or if the transit is linked to humanitarian disaster aid or is part of an emergency donation.

§ 6. If, during the validity period of their licence for export or transit, the applicant obtains information on the change of purpose or destination or of the re-export of goods that they actually exported or forwarded on the grounds of said licence, they shall notify the unit designated for that purpose by the Government of Flanders of this.

Subsection 2. - Criteria in case of export and transit

Art. 41. Each application for export or transit shall be verified against the criteria referred to in Article 26.

Art. 42. Besides the cases referred to in Article 26, each application for export or transit can also be denied, taking into account the criteria referred to in Article 28.

TITLE 4. - Suspension, revocation and restriction of licences, authorisations, certificates, preliminary opinions and written confirmations

Art. 43. § 1. Licences, authorisations, certificates, preliminary opinions and written confirmations that have been granted on the grounds of the present Decree or on the basis of Firearms Regulation 258/2012 can be suspended or revoked or the use thereof can be restricted on the basis of a procedure laid down by the Government of Flanders, if:

1° the terms and conditions for granting them are no longer fulfilled or the terms and conditions and restrictions referred to in Articles 12 and 33 have not been respected;

2° there is or has been a change in the circumstances since the licence was granted, which can have a significant impact on the verification referred to in Articles 11, 26, 28, 32, 41 and 42;

3° security interests or reasons of public order or safety require this.

If a suspension, revocation or restriction is intended to be enforced as an individual measure, the measure shall in no event be imposed before the person concerned has been heard, whereby said person may or may not be represented

by counsel of their choosing, or without said person having been properly summoned to a hearing.

§ 2. If exceptional circumstances require urgent measures, the validity of current licences, certificates and written confirmations can be provisionally suspended by means of a simple notification for a period not exceeding sixty days.

TITLE 4/1. - General restrictive measures

Art. 43/1. § 1. If circumstances occur or have occurred in a country that may have such a significant effect on the verification referred to in Articles 26, 28, 41 and 42, and if it is considered that in those circumstances any transfer, export or transit with that country as the country of destination or end use would be in conflict with the criteria set out in the aforementioned articles, the Government of Flanders may decide that no transfer, export or transit with that country as the country of destination or end use shall be permitted for a period of no more than six months.

In the decision referred to in the first sub-paragraph, the Government of Flanders shall state to which end users or categories of end users and to which categories of goods as referred to in Articles 7, 8 and 30 the measure shall apply.

The Government of Flanders may decide that the transfer, export and transit can still be allowed if the country concerned is the country of destination, but not the country of end use.

§ 2. Each measure issued pursuant to paragraph 1 shall be periodically evaluated.

If deemed necessary by the circumstances in the country concerned at that time, the measure referred to in paragraph 1 may be extended or adjusted for a period not exceeding six months at a time.

§3. The Government of Flanders shall establish the procedure for imposing, extending and adjusting the measure referred to in paragraph 1, and the more detailed rules for this.

The issue, extension, non-renewal or adjustment of the measure referred to in paragraph 1 shall be notified to the Flemish Parliament and be published on the website of the Flemish public administration immediately after the decision has been made.

TITLE 5. - Temporary exclusion of applicants

Art. 44. § 1. Based on a procedure laid down by the Government of Flanders, a person can be denied the granting or usage of any licence, authorisation or written confirmation or any certificate or preliminary opinion for a period of between one and six months if there are indications that said person performs or has performed one of the following acts relating to defence-related products, other materials for military use, law enforcement equipment, civilian firearms, components or ammunition:

1° they transfer goods without the required licence to do so; they import, export or forward them or attempt to transfer, import, export or forward them;

2° they transfer goods of which transfer, import, export and transit are prohibited; they import, export or forward them or attempt to transfer, import, export or forward them;

3° they transfer, import, export, or forward goods or attempt to transfer, import, export or forward them in a manner that is contrary to the terms and

conditions for usage of the granted licence or to the other provisions of the present Decree or of the implementing provisions;

4° they provide incorrect or incomplete information in order to obtain a licence;

5° they fail to provide information and documents or provide such information and documents in a form that is incorrect or incomplete;

6° they have committed crimes that are not directly related to the application of the present Decree, but can have a significant impact on it, such as infringements of the arms legislation, violent crimes or forgery.

§ 2. Under no circumstances shall such a measure be imposed without hearing the person concerned, who may or may not be represented by counsel of their choosing, or without them being properly summoned to a hearing.

§ 3. In the case of a criminal preliminary investigation into the unlawfulness referred to in paragraph 1, this exclusion measure can be extended until the time at which the competent body is of the opinion that the criminal proceedings must either be initiated or not.

If criminal proceedings are initiated for the unlawfulness referred to in paragraph 1, this exclusion measure can be extended until the time when a decision on the criminal proceedings has become *res judicata*.

§ 4. The exclusion measure referred to in paragraph 1 can be limited to certain import, export, transit or transfer activities and to particular categories of goods referred to in the present Decree.

TITLE 6. - Right to be heard in case of denial

Art. 45. If an application for a licence, authorisation, certificate or written confirmation is denied, the applicant shall have the right to be heard, whether or not assisted by counsel of their choosing, to discuss their case.

The Government of Flanders shall establish more detailed rules for this right to be heard.

TITLE 7. - Supervisory and criminal provisions

CHAPTER 1. - Supervision of compliance with the Decree and its implementing provisions

Art. 46. § 1. Subject to the application of the competences of the judicial police officers and personnel of the General Administration of Customs and Excise Duties of the FPS Finance, the personnel designated by the Government of Flanders, hereafter referred to as supervisors, shall supervise compliance with the present Decree and its implementing orders.

§ 2. If it can be reasonably useful for the purpose of performing their duties, the supervisors can utilise the following rights:

1° to enter any place with the necessary equipment at any time. However, they can only access occupied premises with the prior and written consent of the occupant or with prior and written authorisation of the judge in the police court. In the latter case, they can only access the occupied premises between five o'clock in the morning and twenty-one o'clock in the evening;

2° to demand perusal of all documents, correspondence and other information carriers, in any form whatsoever, and to have a copy made of this or to make a copy themselves;

- 3° to examine objects or have them examined, to test them or have them tested, to take samples of them or have samples taken of them, to measure them or have them measured and to open packages to that end or have them opened. If the examination cannot be performed on site, they may take the objects with them for a short period of time, in return for a written receipt issued by them;
- 4° to collect relevant information;
- 5° to question any person about facts they consider useful for the performance of the supervision;
- 6° to stop modes of transport free of charge to examine the cargo or have it examined, including the cargo on the quay or in storage places in the port, destined for or originating from transport by water or air, and the transport documents. If the examination cannot be carried out on site, they may order the load to be transferred to another location within a 15 kilometre radius at the expense of the person responsible for the import, export, transit or transfer.

When exercising their rights, supervisors may establish facts with the aid of audio-visual resources, they may be assisted by persons whom they have designated for this purpose on the grounds of their expertise and they can demand police assistance.

When an infringement is detected, supervisors may, for the purpose of taking evidence, take all protective measures relating to cases for a maximum period of seventy-two hours. If the infringement concerns a crime as referred to in Article 47, § 1, the supervisor who has taken such a protective measure shall immediately notify the competent public prosecutor thereof.

When exercising their rights, supervisors shall have proof of identity on them, which they must show as soon as they are requested to do so. The Government of Flanders shall establish the properties of such proof of identity.

Everyone shall provide supervisors with all such cooperation as they may reasonably request in the exercise of their supervisory rights within the term set by them. The prevention of the supervision regulated by or pursuant to the present Decree shall be punishable in accordance with Article 48, § 1, second sub-paragraph.

§ 3. Supervisors shall be competent to detect and establish the crimes referred to in Article 47, § 1, by means of an official report. This official report shall have evidential value until the contrary is proved.

The supervisor shall immediately send their official report to the competent public prosecutor, together with a written request asking the public prosecutor to pronounce on the criminal or non-criminal treatment of the infringement in question.

A copy of each official report shall also be delivered to the unit referred to in Article 48 and, if relevant, to the competent service of the General Customs and Excise Administration of the FPS Finance.

The Government of Flanders may also grant supervisors the capacity of judicial police officer.

§ 4. Supervisors shall be authorised to detect infringements of the provisions of the Decree and of the implementing provisions other than the crimes referred to in Article 47, § 1, using the rights referred to in paragraph 2, and to establish these infringements in a report.

A copy of said report shall also be delivered immediately to the persons concerned and to the unit referred to in Article 48.

If a crime as referred to in Article 47, § 1 is established in connection with the infringement in question, the establishment of the infringement shall be included in the official report referred to in paragraph 3.

CHAPTER 2. - Criminal sanctions

Art. 47. § 1. Subject to the application of the competences of the General Administration of Customs and Excise Duties of the FPS Finance, the infringements and attempted infringements referred to in this paragraph of the provisions of the present Decree, the Firearms Regulation 258/2012, and of its implementing provisions shall be penalised as specified below. These infringements shall be referred to as crimes.

The import, export, transit and transfer of goods of which import, export, transit and transfer are prohibited on the grounds of Article 3, § 1, first sub-paragraph, and the import, export, transit and transfer in spite of an embargo or other restrictive measure by the UN, EU or OSCE and any attempts thereto shall be punishable by imprisonment for between five and ten years and a fine of no less than 750 euros and not more than 750,000 euros or double the value of the goods in question, if this amount is exceeded.

The import and transfer to the Flemish Region of goods of which import and transfer to the Flemish Region are prohibited on the grounds of Article 3, § 1, second sub-paragraph, and the import, export, transit and transfer of goods of which import, export, transit and transfer are subject to licensing on the basis of the present Decree or the Firearms Regulation 258/2012 without a valid licence or in a manner that is contrary to the user terms and conditions of the licence granted and any attempts thereto, shall be punishable by a maximum prison sentence of five years and a fine of no less than 250 euros and no more than 250,000 euros, or double the value of the goods in question, if this amount is exceeded.

Besides the punishments referred to in the second and third sub-paragraphs, the judge can order that legal persons be prohibited, for a maximum period of ten years and even for the account of another person, from performing import, export, transit or transfer activities as referred to in the present Decree or one of said activities for all or particular categories of goods referred to in the present Decree.

All punishments shall be doubled in the case of re-offence.

§ 2. Attempted infringements as referred to in paragraph 1, first sub-paragraph, shall be understood to mean the following acts:

1° the dispatch, transport, acquisition or possession of goods of which import, export, transit and transfer are prohibited on the grounds of the present Decree or for which a licence is required, with the obvious aim of importing, exporting, forwarding or transferring them in a manner that is contrary to the provisions of the present Decree and its implementing provisions;

2° providing incorrect or incomplete information when submitting an application for a licence with the obvious aim of importing, exporting, forwarding or transferring goods in a manner that is contrary to the provisions of the present Decree, the Firearms Regulation 258/2012, and its implementing provisions.

In the cases referred to in the first sub-paragraph, 1° and 2° the attempt shall be equated to the crime as such.

§ 3. The provisions of the First Book of the Criminal Code, including Chapter VII and Article 85, shall apply to the infringements referred to in paragraphs 1 and 2.

CHAPTER 3. - Administrative sanctions

Art. 48. § 1. In cases where a respectively competent body has established a crime or attempted crime as referred to in Article 47, § 1, and, where appropriate and pursuant to a criminal preliminary investigation, no criminal proceedings have been initiated within two months after such establishment, the unit designated for that purpose by the Government of Flanders can decide the following by way of administrative sanction:

1° to impose a fine of at least 150 euros and at most 150,000 euros or twice the value of the goods in question, if higher, for crimes referred to in Article 47, § 1, first sub-paragraph, and at least 50 euros and at most 50,000 euros or twice the value of the goods in question, if higher, for crimes referred to in Article 47, § 1, second sub-paragraph. The fine shall be increased by the surcharges applicable to the criminal fines;

2° to pronounce a prohibition, for a maximum period of one year and even for the account of another person, to perform import, export, transit or transfer activities as referred to in the present Decree or one of said activities for all or particular categories of goods.

In cases where a respectively competent body has established infringements of the provisions of the Decree, the Firearms Regulation 258/2012, and of the implementing provisions other than the crimes referred to in Article 47, § 1, the unit designated for this purpose by the Government of Flanders may decide to impose an administrative fine of at least 10 euros and at most 10,000 euros or twice the value of the goods in question, if that is higher. The fine shall be increased by the surcharges applicable to the criminal fines.

§ 2. The Government of Flanders shall establish the procedure for imposing such sanction and the more detailed rules for implementing it.

In no event shall such a sanction be imposed without having heard the person concerned or having properly summoned them to a hearing.

§ 3. In case the decision referred to in paragraph 1 is challenged an appeal must be lodged with the court of first instance in the judicial district where the person concerned has their place of residence or registered office through submission of a petition, on penalty of lapse within a period of two months following receipt of the notification of the decision.

If the person concerned does not have a place of residence or registered office in Belgium, the appeal must be lodged with the court of first instance of Brussels.

Title Vbis of Book II of the fourth volume of the Judicial Code shall apply accordingly.

The appeal shall suspend the execution of the decision.

§ 4. In case of mitigating circumstances the unit referred to in paragraph 1 or in case of appeal, the court of first instance, may reduce the amount of the imposed fine, even to less than the applicable minimum amount when imposing a fine.

§ 5. At the request of the person concerned the fine or the prohibition of activities referred to in paragraph 1 may be imposed with a postponement of enforcement for a probationary period which may not be less than one year or more than three years.

The postponement shall be automatically legally revoked if, during the probationary period, a new infringement as referred to in the present Decree has been committed, resulting in a sentence or the imposition of an administrative fine or prohibition of activities.

Art. 48/1. A Fund for Arms Trade-related Fines shall be established, hereinafter referred to as the Fund.

The Fund shall be a budgetary fund as referred to in Article 12 of the Decree of 8 July 2011 governing the budget, the accounts, the allocation of grants and the control of the application thereof, and the audit by the Belgian Court of Audit.

The Fund shall be fed by the collection of the administrative fines referred to in Article 48 of the present Decree and Article 24, § 2 of the Cooperation Agreement between the Federal State, the Flemish Region, the Walloon Region and the Brussels-Capital Region on the implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on 13 January 1993 (the Convention).

The Fund shall be used for monitoring compliance with the present Decree, its implementation and enforcement, and for initiatives to promote compliance of the Flemish defence industry, arms dealers and arms owners, such as information sessions and documentation material.

The accounting officer who collected the revenues shall have direct access to the appropriations of the Fund.

TITLE 8. - Reporting

Art. 49. § 1. Persons using the licences referred to in the present Decree shall report on this to the unit designated for this purpose by the Government of Flanders on the grounds of the summaries referred to in paragraphs 2 and 3.

§ 2. Persons using the general, global or individual licences referred to in Articles 14, 15 and 16 shall keep a detailed and full summary of their transfers per licence used.

These summaries shall comprise trade documents containing the following elements:

1° a description of the defence-related products transferred and the categories thereof;

2° the quantity and value of the defence-related products transferred;

3° the dates of transfer;

4° the name and address of the consignor and the consignee;

5° the end use and end user of the defence-related products;

6° proof that, on the grounds of Article 12, § 1, the terms and conditions and restrictions pertaining to the use of the licence were complied with;

7° proof that the information on the restrictions of the end use or export after transfer pertaining to a licence was communicated to the consignee of the defence-related products.

§ 3. Persons using the individual, combined or multiple licences referred to in Articles 22, 23, 34, 36, 38 and 39 shall keep a detailed and full summary per licence used, containing the following elements:

1° the quantity and value of the respective goods that were actually imported, exported, forwarded or transferred;

2° the dates of the consignments as based on the licence granted;

3° proof that, on the grounds of Article 12, § 1 or Article 33, § 1, the terms and conditions and restrictions pertaining to the use of the licence granted were complied with;

4° proof that the information on the restrictions of the end use, re-export or export after transfer pertaining to a licence granted was communicated to the consignee of the goods concerned;

5° if applicable, the information referred to in Article 31, § 2, second sub-paragraph.

In the case of global and combined licences, the respective persons shall keep a record of the summaries, referred to in the first sub-paragraph, per consignee.

§ 4. The Government of Flanders shall establish the procedure, the format and the more detailed rules for the reporting.

Art. 50. § 1. The Government of Flanders shall present the Flemish Parliament with an annual report on how the present Decree was applied. This report shall contain the following elements, among other things:

1° information on Flemish imports, exports and transits;

2° information on Flemish transfers;

3° information on exemptions granted;

4° information on European and global imports, exports and transits;

5° any amendments to the regulations and procedures in the Flemish Region;

6° international and European initiatives and embargoes;

7° the measures imposed pursuant to Article 43/1.

§ 2. In the annual report referred to in paragraph 1 the Government of Flanders shall report to the Flemish Parliament on the use of the general licences referred to in Article 14, § 2, and of global licences as referred to in Article 15.

For each general licence a summary shall be given of the number of persons having made use of the licence and of the total value in euros of the transfers carried out, broken down by Member State of destination, category of consignee, country of end use, if different from the country of destination, category of end user, if different from the consignee, and category of defence-related products.

For each global licence a summary shall be given of the total value in euros of the transfers carried out, broken down by Member State of destination, category of consignee, country of end use, if different from the country of destination, category of end user, if different from the consignee, and category of defence-related products.

§ 3. In the annual report referred to in paragraph 1 and in a biannual report the Government of Flanders shall report to the Flemish Parliament on the exemptions granted and on licences that have been granted and denied other than the licences referred to in paragraph 2 and on the granted and denied extensions of these licences.

For each country, a summary shall be given of the number of exemptions, licences and extensions that were granted and denied and of the total value thereof in euros.

For each exemption granted and for each licence or extension granted or denied for that country the following particulars shall then be listed:

- 1° the category of defence-related products, the other materials for military use, the law enforcement equipment, the civilian firearms, the components or the ammunition in question;
- 2° the country of end use, if different from the country of destination;
- 3° the categories of consignees;
- 4° the categories of end users, if different from the consignees;
- 5° the value in euros of the exemption, licence or extension;
- 6° where applicable, the criterion or criteria referred to in Articles 26 and 28, on the basis of which the licence or extension has been denied.

§ 3/1. In the annual report referred to in paragraph 1 and in a biannual report the Government of Flanders shall report to the Flemish Parliament on the preliminary opinions issued, referred to in Article 9, § 1 and on the written confirmations granted and denied, referred to in Article 9, § 2.

For each preliminary opinion, the following particulars shall then be listed:

- 1° type of application;
 - a) import, export, transit or transfer;
 - b) temporary or permanent import, export, transit or transfer;
- 2° the category of the defence-related products, the other materials for military use or the law enforcement equipment in question;
- 3° countries of dispatch;
- 4° countries of destination;
- 5° countries of end use, if different from the countries of destination;
- 6° categories of consignees;
- 7° categories of end users, if different from the consignees;
- 8° the positive or negative opinion on the presented import, export, transit or transfer;
- 9° where applicable, the criterion or criteria referred to in Articles 11, 26 and 28, which the negative opinion is based on.

A technical description shall then be provided of the goods for which the written confirmation is requested for each written confirmation granted and denied.

§ 3/2. A monthly report containing an overview of the exemptions granted in the past month and the licences and extensions granted and denied shall be published on the website of the Flemish public administration.

The report referred to in the first sub-paragraph shall contain the same particulars as those referred to in paragraph 2.

§ 4. Subject to the application of the above paragraphs, care shall be taken that no information that can cause damage to the persons concerned will be communicated.

TITLE 9. - Final provisions

Art. 51. In the Act of 5 August 1991 on the import, export and transit of and the fight against the illegal trade in arms, ammunition, and materials specifically used for military use or law enforcement equipment and associated technology, amended by the Acts of 25 March 2003 and 26 March 2003, the following Articles shall be abrogated:

- 1° the Articles of Title 2;
- 2° the Articles of Title 3 relating to the export, transit and transfer of goods of which export, transit and transfer are subject to a licence based on the present Decree;

3° Article 17.

Art. 52. § 1. Prior licences that were issued by the Minister for Justice before the present Decree came into force, referred to in Article 10, first sub-paragraph, of the Act of 5 August 1991 on the import, export and transit of and the fight against the illegal trade in arms, ammunition, and materials specifically used for military use or law enforcement equipment and associated technology, shall continue to apply as prior authorisations as referred to in Article 10.

§ 2. The triennial evaluation of prior authorisations, as referred to in Article 10, § 3, shall also apply to these prior licences.

Prior licences that were granted more than three years before the Decree came into force shall be evaluated for the first time within one year after the coming into force of the Decree.

Art. 53. The present Decree shall be referred to as the Arms Trade Decree.

Art. 54. The present Decree shall come into force on 30 June 2012.