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## Kurzinformation

### The Role of the German Bundestag in Approving Arms Exports (to the Ukraine)

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#### 1. Introduction

Against the background of the war of aggression launched by the Russian Federation against Ukraine on 24 February 2022 and of the discussion within Germany on arms deliveries to Ukraine, this brief answers the question of who in Germany is responsible for approving such arms exports and what role the German Bundestag has in it. In answering this question, this document draws – amongst others publications – on the PRIF Report 7/2020 “German Arms Exports to the World? Taking Stocks of the Past 30 Years” of Simone Wisotzki.<sup>1</sup>

#### 2. The Legal Basis of Arms Exports

With regard to Germany’s legal basis of arms exports, Simone Wisotzki states under point 2 of the above mentioned publication:

“Article 26 para. 1 of [Germany’s Basic Law]<sup>2</sup> emphasises the peaceful character of the German state. One aspect of the constitution’s principle of peace is that actions which may be detrimental to this principle are punishable offences. Article 26 para. 2 of the [Basic Law]<sup>3</sup> defines the licensing authority for German arms exports: **weapons intended for warfare may only be exported with the licence of the German Government**, i.e. the Federal Cabinet. Details of the

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1 Wisotzki, Simone (2020): *German Arms Exports to the World? Taking Stocks of the Past 30 Years*. PRIF Report 7/2020, edited by the Peace Research Institute Frankfurt / Leibniz-Institute Hessische Friedens- und Konfliktforschung, available at: [https://www.hsfk.de/fileadmin/HSFK/hsfk\\_downloads/PRIF\\_Report\\_07\\_20.pdf](https://www.hsfk.de/fileadmin/HSFK/hsfk_downloads/PRIF_Report_07_20.pdf)

2 *Basic Law for the Federal Republic of Germany* (Grundgesetz – GG) in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by Article 1 of the Act of 29 September 2020 (Federal Law Gazette I p. 2048), available at: [https://www.gesetze-im-internet.de/englisch\\_gg/](https://www.gesetze-im-internet.de/englisch_gg/)

3 *ibid.*

licensing procedure are to be stipulated in a federal law. The War Weapons Control Act (Kriegswaffenkontrollgesetz, KWKG)<sup>4</sup> is commonly considered to be this implementing law. Article 6 (3) of the KWKG contains first provisions for denying the export of weapons of war, e.g. if their export could be used for wars of aggression or if Germany's international legal obligations would be violated in case licences were granted.<sup>4</sup> In Germany, licences for arms exports are usually applied in the form of so-called preliminary inquiries by the arms manufacturing company. Often, there are several years between the individual export licence and the actual export of the weapons of war. That's why the War Weapons Control Act also provides for the possibility of revocation, for example if the security situation of the recipient country has significantly changed in the meantime.

The Political Principles for the Export of Weapons of War and other Military Equipment state that the export of weapons of war to so-called third countries must be handled restrictively. Licences for exporting weapons of war to such countries are not granted unless 'in a specific case, this is exceptionally **warranted due to particular foreign or security policy interests of the Federal Republic of Germany, having due regard to Alliance interests.**'<sup>5</sup> Looking at Germany's arms export policy in the past, one finds that arms exports towards third countries are by no means isolated cases and that the exception of arms exports to third countries has long become the rule."<sup>6</sup>

### 3. Procedures of and Roles and Responsibilities in Licensing Arms Exports

With regard to export licenses, it should be noted that these are only to be granted after a specific assessment of each individual case, and decided upon according to foreign and security policy considerations. With respect of licensing procedures, the PRIF report states:

"In Germany, a distinction is made between exports of weapons of war and of other military equipment; accordingly, either the Ministry for Economic Affairs [and Climate Action, *insertion by the author*] takes a decision, based on assessments by the country divisions of the Foreign Office and by the Ministry of Defence, or in the case of other military equipment, also the Federal Office for Export Control (Bundesausfuhramt, BAFA). **Particularly contentious or problematic cases of arms exports are decided upon in secret meetings of the Federal Security Council**"<sup>7</sup> (Bundessicherheitsrat). Thus, **the German Bundestag has no role in approving arms exports in general, nor in approving arms exports to Ukraine in particular.**

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4 *Act Implementing Article 26 (2) of the Basic Law (War Weapons Control Act)*, as amended by the Announcement of 22 November 1990 (Federal Law Gazette I, p. 2506), as amended by Article 3 of the law of 11 October 2002 (Federal Law Gazette I, p. 3970), available at: [https://www.bafa.de/SharedDocs/Downloads/EN/Foreign\\_Trade/afk\\_war\\_weapons\\_control\\_act.pdf?\\_\\_blob=publicationFile&v=4](https://www.bafa.de/SharedDocs/Downloads/EN/Foreign_Trade/afk_war_weapons_control_act.pdf?__blob=publicationFile&v=4)

5 Federal Ministry for Economy and Energy (26 June 2019): *Political Principles of the Government of the Federal Republic of Germany for the Export of War Weapons and Other Military Equipment*, article III, para 2; in German language available at: [https://www.bmwk.de/Redaktion/DE/Downloads/P-R/politische-grundsaeetze-fuer-den-export-von-kriegswaffen-und-sonstigen-ruestungsguetern.pdf?\\_\\_blob=publicationFile](https://www.bmwk.de/Redaktion/DE/Downloads/P-R/politische-grundsaeetze-fuer-den-export-von-kriegswaffen-und-sonstigen-ruestungsguetern.pdf?__blob=publicationFile)

6 Wisotzki (2020), *ibid.*, p. 3

7 Wisotzki (2020), *ibid.*, p. 5

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But, as Simone Wisotzki emphasizes, **the German Bundestag is basically “responsible for parliamentary scrutiny of government action.** In matters of arms exports, the Federal Constitutional Court ruled against a complaint by the party Bündnis 90/Die Grünen (Greens) demanding more transparency and less secrecy in October 2014.<sup>8</sup>

At the least, **the Bundestag’s Committee on Economic Affairs receives ex-post information about the results of secret arms export policy decisions by the Federal Security Council.** Question times and inquiries complement the limited opportunities of parliamentary scrutiny. Twice a year, the German Ministry for Economic Affairs and Climate Action publishes the official figures of licences and actual exports of weapons of war and other military equipment in the report on exports of military equipment. Here, too, transparency is limited, as only very general information is provided on the recipient states and amounts for which arms export licences were granted.”<sup>9</sup>

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8 2 BvE 5/11 Judgment of 21 October 2014: *Right of Bundestag members to be informed of exports of military equipment after the Federal Security Council has granted permits*; available at: [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2014/10/es20141021\\_2bve000511en.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2014/10/es20141021_2bve000511en.html)

9 Wisotzki (2020), *ibid*, p. 5