GERMAN LEGISLATION IN THE FIELD OF BIOLOGICAL WEAPONS AND AGENTS

Prepared by the Federal Republic of Germany

1. The governing principle in the field of biological weapons and agents in Germany has traditionally been that of prohibition. It is thus strictly prohibited in Germany to handle biological weapons; any such acts are subject to heavy penalties. This principle dates back to the early days of the Federal Republic of Germany; on acceding to the Western European Union in October 1954, Germany undertook to refrain from developing or producing any nuclear, biological or chemical weapons on its territory. This undertaking was incorporated into various rules.

2. A special act on the implementation of this ban was not drawn up under German legislation; the key rules are to be found in the War Weapons Control Act of 1961. This act has been amended on several occasions during the last few decades in order to adapt it to the latest international developments.

3. Alongside this prohibition, there are supplementary licensing regulations for the export of dual-use goods (agents and equipment) designed for civilian purposes. The corresponding German licensing practice in this field is explained in item III.

Provisions on prohibition enshrined in the War Weapons Control Act

4. The current legal situation in the sphere of biological weapons dates back to the 1990 amendment to the War Weapons Control Act when a comprehensive ban on handling biological weapons was adopted.

5. Under Section 18 of the War Weapons Control Act it is prohibited to develop, produce or trade in biological weapons, to acquire, transfer, import, export or transport them through Federal territory, or to exercise actual control over them.
6. All of these acts are related to biological weapons in the stricter sense. These weapons are almost all included in the War Weapons List (annex to the War Weapons Control Act); No. 3 in the War Weapons List contains approximately 70 biological agents (viruses, bacteria, toxins and fungi). It is significant that this list is open-ended; comparable agents with newly developed properties, e.g. as a result of genetic manipulation, are covered, i.e. the general ban also extends to new developments. Nevertheless, the list is updated on a regular basis.

7. The ban on handling biological weapons is comprehensive; it not only extends to biological agents but to all goods and services involved in the manufacturing, production, etc. of biological weapons, in so far as there is an intention to use them accordingly. Furthermore, the ban extends to the encouragement of actions, i.e. it covers every form of assistance, as well as indirect supportive action. Any conduct which makes possible or facilitates any of the activities described is prohibited. This ensures that any activity connected to biological weapons will be prosecuted.

8. Violations of existing bans are subject to stiff penalties; normally the minimum penalty is two years but it can rise to up to 15 years in particularly serious cases. The threat of heavy penalties helps to ensure that the bans really are observed.

9. Acts that are "suitable and intended for providing protection against the effects of biological weapons or warding off these effects" are not prohibited. All activities aimed at protecting the population and/or troops are thus permitted in principle but largely subject to authorization.

**Licensing regulations of the Foreign Trade and Payments Act/Ordinance (exemptions from the prohibition on handling biological agents and equipment)**

10. In practice, biological agents and biotechnological equipment are used for many civilian purposes. Certain agents and items of equipment are needed by institutes and laboratories in order to carry out scientific research and/or to advance medical developments. Biotechnological equipment is often used in the pharmaceutical and food industries. The prohibition regulations contained in the War Weapons Control Act do not apply in such cases. However, the national safety regulations for dealing with biological substances must be observed. Specific foreign-trade licensing regulations apply to exports.

11. In Germany, the products which require a licence are listed in the so-called Export List (annex to the Foreign Trade and Payments Ordinance). This list contains control items for biological agents and equipment which are identical to the items contained in Appendix I of the so-called EC Dual-Use Regulation No.1334/2000. These lists of goods are largely based on the obligations within the framework of the international export control regime, as well as of international agreements such as the BWC and CWC, which are incorporated nationally, or through the EU, into established law.

12. Alongside the export of dual-use goods, technical support measures in connection with biological weapons also require a licence (e.g. instruction, training, imparting of practical knowledge or capabilities or advisory services, Sections 45ff, Section 4c No. 9 of the Foreign Trade and Payments Ordinance). Furthermore, a licence must be obtained for transit trade for many countries of destination. Non-listed goods may also require a licence within the frame-
work of catch-all regulations when they are intended for sensitive end-uses. The German Government regards these far-reaching controls as an important means of preventing the proliferation of biological weapons and thus of fulfilling the objectives of the BWC.

The German Government's licensing policy

13. The German Government's licensing policy in the field of biological agents and equipment is restrictive in order to be able to effectively counter the proliferation of biological weapons and bio-terrorism. This means that supplies of biological agents or equipment are only authorized if it is clear that they are to be used for civilian purposes. End-users and uses are carefully examined in each individual case. Among other things, an unambiguous end-use certificate must be submitted.

14. The companies and research institutions active in this sensitive area are under an obligation to exercise special care; their reliability may be examined by the licensing board (Federal Office of Economics and Export Control) and the customs authorities.

15. Considerable importance is attached to an open dialogue with industry and research in the Federal Republic of Germany. This is the only way to guarantee effective control to prevent the proliferation of biological weapons. To this end, seminars are held to heighten awareness among the business community and information leaflets are drawn up.