UNGA Resolution 68/44 «National Legislation on transfer of arms, military equipment and dual-use goods and technology»

As requested by paragraph 2 of the United Nations General Assembly Resolution 68/44, entitled «National legislation on transfer of arms, military equipment and dual-use goods and technology», Portugal hereby submits a list of legislation governing these matters:

A. Military goods

1. Legislation on export and import control, transfers within the European Union (EU), brokering, transit and transshipment of defense related goods.

The following legislation is applicable:

- Law 37/2011, dated 22 June, that regulates the transfer and circulation of defense related products, covering the licensing and control of exports (including re-exports), imports (of some specific military products), transit and transshipment as well as end user controls. This law transposes to the internal law the European Directives 2009/43/EC, from European Parliament and the Council, dated 6th May, and 2010/80/EU, from the Commission, dated 22nd November, revoking the Decree-Law n.º 436/91, dated 8th November;

- Law 49/2009, dated August 5th, that stipulates the conditions of access to activities of trade and industry of military goods and technologies, as well as their practice, with a particular emphasis on brokering;

- Decree-Law 71/2014, dated 12 May, that publishes in its annex the Common Military List which has been approved by the Directive 2014/18/UE from the European Comission, dated 29 January 2014, updating and replacing the list of products related to the defense (equipment that is comprised in the Common Position 2008/944/PESC, from the Council, which defines common rules applicable to the export control of military technology and equipment.)

- Decree-Law 1/86, dated January 2nd, on technology transfer that may harm national interests. It allows the Ministry of the Defense (MoD) to forbid exports
of goods made in Portugal previously imported or in transit through the Portuguese territory.

2. Procedures regarding export control:

Law 37/2011, dated 22\textsuperscript{nd} June, sets forth the formal procedures for export control. To apply for an export license the following documents must be presented to the Licensing Authority (MoD):

- Export license application

- International Import Certificate (issued by the importing country)

- End User Certificate (that must contain a non-re-export clause)

The request is assessed on a case by case basis against national foreign policy requisites and the eight criteria of the EU Council Common Position 2008/944, dated 8\textsuperscript{th} December, which includes:

1. Respect for the international obligations and commitments of Member States, in particular the sanctions adopted by the UN Security Council or the European Union, agreements on non-proliferation and other subjects, as well as other international obligations.

2. Respect for Human Rights in the country of final destination as well as respect by that country of international humanitarian law.

3. Internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts.


5. National security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries.

6. Behavior of the buyer country 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 military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions.

8. Compatibility of the exports of the military technology or equipment with the technical and economic capacity of the recipient country, taking into account the desirability that states should meet their legitimate security and defense
needs with the least diversion of human and economic resources for armaments.

The request is also assessed on the basis of a case by case analysis taking into account the possible existence of national, allied countries, European Union, OSCE or UN embargoes against the importing country, export denials to the importing country or the end user, by other European Union’s or Wassenaar Arrangement Participating States.

In the event of breach of the legal procedure sanctions apply according to Law 37/2011, dated 22nd June.

B. Self-defense, sport and hunting arms

Law 12/2011, dated 27th May, states that the police is competent to license production, assembly, repair, import, export, transfer, storing, circulation, trade, acquisition, cession, possession, declaration, keeping, safety, use and bear of arms, their components and ammunitions. The import, export and transfer of limited-access arms, essential components of firearms, ammunition, uses, cartridges or cases with fuses and handles for long-barrel guns with retractile or foldable butts depend on a prior permit by police.

The police carries out inspections to determine whether the goods intended to be imported, transferred or exported comply with the legislation. The police is also responsible for checking the above-mentioned goods in transit in the international areas of ports and airports, having the prerogative to open cartons or containers.

Police inspections are made in co-operation with the MoD, whenever they involve dual-use arms, ammunition or accessories that fall within the following categories: equipments, military means and war material or classified as such by the MoD; automatic firearms; chemical, biological and radioactive weapons or weapons that may cause a nuclear explosion; ammunition with piercing, explosive, incendiary, tracing or disintegrating bullet; silencers, class B short, repetition or semiautomatic firearms; long semiautomatic repetition single or double-barreled firearms, in which one of the barrels is striated; long semiautomatic or repetition smooth-bore barreled (measuring less than 60 cm) firearms; long semiautomatic smooth-bore barreled (measuring more than 60 cm) firearms. If these joint inspections conclude that arms, ammunition and accessories qualify as military weaponry, the procedure to grant permit to import, export, transfer, transit or transshipment is closed, the weapons are
returned to the origin and the international notification procedure falls into the jurisdiction of the MoD.

Possession of forbidden weapons, considered as equipment, military means or war material, as well as trafficking and illegal brokering of weapons are punishable by law.

C. Dual-Use items and technologies

The EU Council Regulation (CE) n.º 428/2009, dated 5th May, setting up a Community regime for the control of exports, transfers, brokering and transit of dual-use items is directly applicable in Portugal.

In the event of breach of the previously referred Council regulation, the material Tax Violations Regime (Law 15/2011, dated June 5th) is applicable.

In what concerns customs control and enforcement, the custom houses role in the supply circuit has been evolving constantly, demanding from those ones a relevant role as a fundamental agents in the security of the supply circuit. This role is legally consecrated and recognized in the Declaration of Mission by the customs authorities in the UE, as it is prescribed in the article 2.º of the Regulation CE n.º 450/2008, from the European Parliament and Council, dated April 23rd 2008, which has established the Community Custom Code (Updated Custom Code).

The changes in the Community Custom Code, that have taken place in 2005 and 2006, constitute a necessary legal basis to the development of a common frame in the supply circuit risk management. This change as well as the subsequent executive rules has introduced comprehensive and long lasting changes which may have consequences at the same time in the customs houses and in the commercial agents. This common framework takes into account, among other measures, an analysis of the security risk, based on anticipated information about the merchandise sent by the commercial agents, by electronic means before the entry or departure of the merchandise with origin in the UE or coming to the UE as a final destiny, allowing the accomplishment of the adequate control, based on the risk.

In this context, the Member States’ customs authorities improved common control methods applied to all EU Member States, which consists of:

- A set of common risk rules on security and protection which should be applied on a risk analysis of all traffic operations involving all the
merchandise that entry or exit the customs territory in the European Union (Restraint EU).

- A common list of countries that represent any risk in what concerns the operations of entrance/transit of merchandise in the EU (Restraint EU).

- A common list of countries that represent any risk in the operations of export, transit, exit of merchandise in the EU (Restraint EU).

- A common list of products potentially dangerous to the operations of entrance/transit of merchandise in the EU (Restraint EU).

- A common list of products potentially dangerous to the operations of export/transit/exit of merchandise from the EU (Restraint EU).

These are tools that may contribute to assure a common custom approach and that may guarantee an equal level of custom control, all along the external frontier, in what concerns the security and safety over all the merchandise which enters or exits the EU custom territory, this way contributing to reduce the risks to the Community and their citizens, as well as to the Community commercial partners.