

## Germany

### ***Operative Paragraph 1***

*Decides that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery*

1. The Federal Republic of Germany does not provide any form of support to non-State-actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.

Relevant laws and regulations are in place and being implemented. Thus, effective domestic control is established and illicit actions are penalized.

Furthermore, all relevant measures taken and laws implemented are constantly scrutinized with regard to amendments and revisions that current events or developments may make necessary.

2. Any other policy would violate the German Constitution, Article 26 of which prohibits all actions that might disturb the peaceful relations between nations. Article 26 also forbids the manufacture, the transport and marketing of weapons designed for war unless approved by the Federal Government.

The Federal Republic of Germany is party to all relevant multilateral disarmament, arms control and non-proliferation treaties and conventions and remains firmly committed to its obligations within international institutions and conventions, i.e. the United Nations, EU, IAEA, NPT, CWC, BWC etc. The respective conventions have been translated into national law. Germany shall continue to promote an effective multilateralism as the best way to meet the challenges of the 21st century, in particular the proliferation of weapons of mass destruction. To this end Germany also supports relevant institutions and international cooperative efforts undertaken in the framework of relevant institutional fora, i.a. PSI, G8 Global Partnership, EU.

### ***Operative Paragraph 2***

*Decides also that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;*

6. National law, complemented by enacting obligations derived from relevant international conventions and treaties to which Germany is party, is geared towards effectively preventing proliferation of weapons of mass destruction to non-state actors and to states.

7. The basic regulations on the manufacture, transport and marketing of war weapons are contained in the War Weapons Control Act established in 1961 in response to art 26 of the German Constitution (Basic Law), where all actions to develop, transport or market war weapons are prohibited unless explicitly approved by the Federal Government. Transport according to the constitutional article 26 includes not only cross border transport but also domestic transport. Thus, the War Weapons Control Act provides for a comprehensive framework; the Foreign Trade and Payments Act, the War Weapons Reporting Ordinance and the Implementation Act on the Convention on the Prohibition of Chemical

Weapons as well as the Implementation Act on the Convention of 10 April 1972 on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin

Weapons further complement the War Weapons Control Act.

Further laws relevant for the prohibition of development, acquisition, production, possession, the transport, transfer or use of nuclear, chemical or biological weapons and their means of delivery are the Foreign Trade and Payments Ordinance of 18 December 1986, as well as the directly applicable Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology. The Federal Republic of Germany, therefore, has a comprehensive and effective system of laws which fulfils the requirements of state legislation deriving from Res. 1540/04 op 2.

8. Since the middle of the 80s proliferation through export of dual use goods has become particularly problematic as more and more actors tried to get hold of restricted technology. Since it became known in 1989 that a German manufacturer delivered sensitive material for a chemical weapons factory in Libya the German regulations and control procedures including not only the War Weapons Control Act, but i.a. also the Foreign Trade and Payments Act and the Penal Code have been repeatedly amended and rendered more severe.

The details of German regulations are outlined below.

9. Pursuant to Sections 17 and 18 of the War Weapons Control Act all persons, groups and organizations are forbidden to develop, produce or trade in nuclear weapons, parts, devices, assemblies or substances especially designed for them and biological and chemical weapons, to acquire them from or transfer them to another person, to import or export them, to transport them through or otherwise bring them into or out of federal territory, or otherwise exercise actual control over them. This comprehensive and absolute prohibition covers the possession of, influence on and use of nuclear, chemical and biological weapons. It is also forbidden to induce another person to commit one of the above-mentioned activities or to encourage one of these activities in any way, particularly through financing.

10. These punitive norms are reinforced by the fact that violations of the law are to be legally classified as crimes and punishable with a prison sentence of up to 15 years. This also applies to attempts to commit one of the above-mentioned acts. Specific penalties for the illicit use of nuclear or radioactive material, the transfer of this material to unauthorized persons or the brokering of such deals, preparation of a radiation offence, initiation of a nuclear explosion, the development, manufacture, purchase, import, export or transit of a nuclear weapon are stipulated in the German Penal Code and may result in fines of up to 250,000 euro, imprisonment for up to five or ten years or even for life.

As a State Party to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction of 10 April 1972, Germany has undertaken not to transfer to any recipient whatsoever the goods covered by this Convention, directly or indirectly, and not in any way to assist, encourage or induce anyone to manufacture or otherwise acquire such weapons.

### ***Operative Paragraph 3***

*Decides also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall: (a) Develop and maintain*

*appropriate effective measures to account for and secure such items in production, use, storage or transport;*

The production, use, storage and transport of nuclear, chemical and biological weapons and related technologies is prohibited and a criminal offence in Germany.

Various legal provisions are in place in Germany to monitor the handling of hazardous biological agents, depending on the type of pathogen, such as the Animal Disease Act, the Plant Protection Act, the Protection against Infection Act and the Biological Agents Ordinance. They contain detailed reporting, controlling and licensing requirements. These special laws make it possible to track the whereabouts of biological agents even when they are used exclusively for civilian purposes.

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*(b) Develop and maintain appropriate effective physical protection measures;*

Pursuant to the Protection Against Infection Act, the Genetic Engineering Act, the Animal Infectious Disease Act and respective ordinances the possession and handling of hazardous biological agents requires special authorization by the respective medical, veterinary or other agencies. The authorizations are granted for specified agents or specified purposes only. Furthermore, authorization is only granted in case of proven professional need, competence and reliability of authorized persons.

Finally, the equipment must meet security requirements that comply with national and international standards. Domestic transfer of hazardous biological agents for legal peaceful purposes may take place only among authorized persons and facilities. Any handling of agents must be documented in detail. In case the licensee fails to meet his obligations national legislation specifies sanctions like temporary revocation or complete withdrawal of the respective authorization and/or administrative fines.

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*(c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;*

31. In the Federal Republic of Germany any form of trade including cross-border trade in nuclear, biological or chemical weapons of mass destruction is prohibited pursuant to Section 17 ff of the War Weapons Control Act. The prohibition also applies to the conclusion or brokerage of contracts which involve the acquisition or transfer of weapons of mass destruction and to all activities leading up to the conclusion of such a contract.

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*(d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, transshipment and re-export and controls on providing funds and services related to such export and transshipment such as financing, and transporting that would contribute to proliferation, as well as*

*establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations* 39. With its extensive prohibitions on handling weapons of mass destruction, including related support services and the prescribed penalties for violation of the law, Germany complies with the requirements of op 3 d concerning nuclear, biological and chemical weapons.

40. Germany is a founding member of all export control regimes in the field of non-conventional weapons: the Nuclear Suppliers Group, the Missiles Technology Control Regime and the Australia Group. The Federal Government considers them to be a relevant contribution of major importance to achieving the goal of preventing the proliferation of WMD as enshrined in the international nonproliferation conventions and treaties (NPT, BTWC, CWC). With a view to contributing to the further development of the scope of all export control regimes, Germany has explicitly supported the inclusion of a catch-all clause (approval requirements for non-listed items in case of possible misuse relevant to proliferation of WMD) and of an additional regime objective, i.e. preventing access of persons suspected of supporting terrorism to listed items. The adoption of the export control lists and the control regulations of the respective export control regimes by states outside the regimes features among the political goals of the Federal Government. Germany maintains that this is an important contribution to global efforts in the fight against proliferation that reaches beyond the state parties of the export control regimes. Germany faithfully implements the guidelines of the export control regimes and has to this end adopted, as necessary, the required national regulations as outlined below.

Export controls for related materials, if they are dual-use items, take place on the basis of Council Regulation (EC) No 1334/2000 of 22 June 2000. The Federal Office of Economics and Export Control (BAFA) subjects such export applications to a thorough technical examination. Decisions on exports to specific countries or recipients with potential proliferation risks are taken by an interministerial export committee representing various ministries and competent authorities. Licences are generally granted only if the end-use of the items for civilian purposes has been presented convincingly and plausibly and there are no indications that the items will be put to sensitive use.

Licensing practice is largely shaped by the Federal Government's decision not to contribute to the proliferation of weapons of mass destruction and the missiles and systems that deliver them.

Moreover, the export of unlisted dual-use items, i.e. items which the international export control regimes have not deemed generally worth controlling, may also require a licence. The export of such goods requires a licence if they are or could be intended for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of nuclear, biological or chemical weapons or for the development, production, maintenance or storage of missiles capable of delivering such weapons

#### ***Operative Paragraph 6***

*Recognizes the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists.*

53. The existence of national lists of items to identify the range of controllable items is a central aspect of German export control. These control lists contain all items classified as worthy of control in the international export control regimes, the competent European Union bodies and the Federal Government. These lists are subject to ongoing checks and updates. Specifically, the decisions taken under the international export control regimes and in the EU on changing the lists are to be translated into national law as soon as possible. This ensures that all items which have been classified as worthy of control at international level are also subject to checks in Germany

***Operative Paragraph 8***

*(c) To renew and fulfill their commitment to multilateral cooperation, in particular within the*

*framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;*

Germany has been supporting the BTWC in all its aspects and has been working actively towards strengthening the Convention with EU and other partners. This includes annual demarches towards universality of the BTWC. Following the failure in 2001 to achieve a legally binding instrument to verify compliance with the Convention, States Parties took a pragmatic decision at the 5th Review Conference to launch a new process scheduled until 2005 with a view to contributing valuable expertise on a full range of topics including national legal implementation of the BTWC prohibitions and export regulations including penal legislation, implementation of national measures to improve the safety/security of dangerous biological agents, national and international efforts to improve biosurveillance of disease outbreaks and, finally, enhancing international capabilities for responding to and investigating cases of alleged use of biological weapons or suspicious outbreaks of disease. Germany is one of the main supporters of this process. Furthermore, in the absence of a verification protocol, Germany has been contributing since 1987 to the confidence building measures (CBMs) by annually reporting all relevant scientific projects, publications and institutions as agreed at the 2nd and 3rd BTWC Review Conferences.