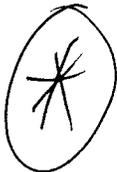


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Federal Decree concerning the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction

of

Juste
12/03/00

The Federal Assembly of the Swiss Confederation,
having regard to Article 8 of the Constitution;
having regard to the message of the Federal Council of 20 April 1994¹;
orders as follows:

Article 1

1. The Convention of 13 January 1993 on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction is approved.
2. The Federal Council is authorised to ratify it.

Article 2

This order is subject to the optional referendum procedure on international treaties providing for accession to an international organisation (art. 89, paragraph 3, let. b, cst.).

¹FF 1994 III 1

Federal order concerning the implementation of the Chemical Weapons Convention

of

The Federal Assembly of the Swiss Confederation,

having regard to the competence of the Confederation with respect to foreign relations;

having regard to Article 41 of the Constitution;

in implementation of the Convention of 13 January 1993 on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention);

having regard to the message of the Federal Council of 20 April 1994¹,

orders:

Section 1: Prohibition of Chemical Weapons

Article 1

1. It shall be prohibited:

- What is prohibited?
- a. to develop, produce, acquire, deliver to anyone, import, export, procure the transit of or stockpile chemical weapons within the meaning of Article II of the Chemical Weapons Convention, engage in the brokerage thereof or otherwise dispose of them;
 - b. to induce anyone to commit an act mentioned under letter a;
 - c. to facilitate the commission of an act mentioned under letter a.

2. This prohibition shall not apply to acts intended:

- a. to enable the competent authorities to destroy chemical weapons, or
- b. to ensure protection against the effects of chemical weapons or to combat such effects.

3. The prohibition shall also apply to acts committed abroad, irrespective of the applicable law at the place of commission if:

- Extraterritorial jurisdiction
- a. such acts violate agreements under international law to which Switzerland is a party;
 - b. the offender is Swiss or has his domicile in Switzerland.

¹ FF 1994 III 1

Section 2: Control Measures

Article 2 Measures concerning the implementation of the Chemical Weapons Convention.

1. Within the framework of the obligations set forth in the Chemical Weapons Convention, the Federal Council shall determine:

a. the conditions for authorisation, the system of mandatory declarations and the surveillance measures relating to the production, stockpiling, transfer, utilisation, brokerage, import, export and transit of chemical weapons;

decl.

b. inspections.

inspections

2. It shall, in particular, determine the conditions for the granting and withdrawal of authorisations.

Article 3 Measures concerning certain countries of consignment

1. With respect to certain countries of consignment, the Federal Council may impose a general prohibition on activities normally subject to authorisation.

2. With respect to countries of consignment that are parties to the Chemical Weapons Convention, the Federal Council may provide for relaxations from or exceptions to the control measures.

Section 3: Procedure, surveillance, fees

Article 4 Competence

The Federal Council shall appoint the respective services and shall regulate the details of procedure.

Article 5 Information, controls and processing of data

1. A person requesting authorisation or in possession of an authorisation shall be required to provide the control authorities with all information and documents necessary for the overall evaluation of a case or of a control.

2. A person engaged in trade or brokerage in chemicals subject to control, or subject in any way to the control measures of this order, shall be required to provide the same information and documents.

3. The control authorities shall be authorised, during ordinary working hours and without prior notice, to enter the commercial premises of persons required to provide information, to inspect them and to examine any relevant files and documents. They shall take custody of documentary evidence. Where there is a prima facie presumption of wrongdoing, more severe requirements shall be available.

Permits + disclosure of information

Swiss inspections →

4. The control authorities may call on the cantonal and communal police, or on the investigative authorities of the customs administration, to carry out their controls. If there is prima facie evidence of an infringement of this order, they may involve the competent police authorities of the Confederation in carrying out their controls.
5. Frontier controls shall be the responsibility of the customs authorities.
6. The control authorities shall be entitled, within the limits of the purposes of this order, to process personal data. With respect to sensitive data, only those data within the meaning of Article 3, letter c, figure 4, of the Federal Data Protection Act of 1992¹ may be processed. As an exceptional measure, the processing of other sensitive personal data shall be authorised where that is essential to the resolution of a case.

Use of
force w/
access

Article 6 Fees

Fees shall be chargeable to cover expenses occasioned by the implementation of this order. The amount thereof shall be fixed by the Federal Council.

Article 7 Legal remedies

Decisions on appeals based on this order may be the subject of an appeal to the Federal Council in accordance with Articles 12 and subsequent of the Federal Administrative Procedure Act².

Appeals

Section 4: Penal provisions

Article 8 Violation of the prohibition of chemical weapons

1. A sentence of long-term imprisonment of up to 10 years, or of non-rigorous imprisonment, shall be imposed on anyone who, deliberately and without being able to rely on an exception under Article 1, paragraph 2:
 - a. develops, produces, acquires, hands over to anyone, imports, exports, procures the transit of, or stockpiles, chemical weapons, engages in brokerage thereof or otherwise disposes thereof;
 - b. induces anyone to commit an act mentioned under letter a, or
 - c. facilitates the commission of an act mentioned under letter a.
2. The custodial penalty may be accompanied by a fine of up to 5 million francs.
3. If the offender is guilty of negligence, the sentence shall be imprisonment for up to 12 months or a fine of up to 500,000 francs.

PENAL
LEGISLATION

State of mind

¹ RS 235.1; RO 1993 1945

² RS 1972.021

4. Any act committed abroad shall be punishable, irrespective of the law at the place of commission: extraterritorial jurisdiction
- a. if it violates agreements under international law to which Switzerland is a party, and + Penal legislation
 - b. if the offender is Swiss or has his domicile in Switzerland.

Article 9 Breaches of control measures

1. Imprisonment or a fine of up to 1 million francs shall be imposed on anyone who deliberately:
- a. in defiance of a prohibition or without appropriate authorisation, or in defiance of the conditions or stipulations included in an authorisation, produces, stockpiles, transmits, uses, imports, exports or procures the transit of chemicals subject to control within the meaning of Article VI of the Chemical Weapons Convention or who engages in brokerage thereof; Violation of permits.
 - b. fails to declare chemicals subject to control at the time of import, export or transit or who makes false or incomplete declarations; failure to declare
 - c. transmits chemicals subject to control to a third party knowing, or having reason to believe, that that party will transmit them directly or indirectly to an end-user not authorised to receive them. transport
2. In the case of an indictable offence, the sentence shall be long-term imprisonment for up to 10 years. The custodial penalty may be accompanied by a fine of up to 5 million francs.
3. If the offender acts negligently, the penalty shall be non-rigorous imprisonment for up to 6 months or a fine of up to 100,000 francs.

Article 10 Contraventions

1. Court orders or a fine of up to 100,000 francs shall be imposed on anyone who:
- a. deliberately refuses to provide information, documents or access to commercial premises under Article V, subparagraphs 1 to 3, or who makes false declarations; failure to disclose
 - b. contravenes an implementing provision the breach of which has been declared punishable, or a decision notified to him under threat of the penalties provided in this article, in the absence of punishable conduct under Article 9.
2. If the offender acts negligently, the penalty shall be a fine of up to 40,000 francs.
3. An attempt to commit, and complicity in, a contravention shall be punishable offences.

4. The time-limit for criminal proceedings shall be 5 years. In the event of interruption of the prescription, this time-limit may not be exceeded by more than fifty per cent.

Article 11 Offences within facilities

In the event of an offence within a facility, Article 6 of the Federal Penal Administrative Law Act¹ shall be applicable.

Article 12 Seizure of material

Seizure

1. The court, even where no specific person is punishable, may declare the seizure of the material involved if subsequent utilisation in conformity with law cannot be guaranteed.
2. The material seized and any proceeds resulting from its sale shall be transferred to the Confederation.

Article 13 Jurisdiction, obligation to report

1. The prosecution and adjudication of offences shall be the responsibility of the federal criminal jurisdiction.
2. The authorities empowered to issue authorisations and to carry out controls, the cantonal and communal police authorities and the customs authorities shall be responsible for reporting to the Public Prosecutor of the Confederation offences against this order that have been noted, or have come to their knowledge, in the exercise of their functions.

Section 5: Collaboration between authorities

Article 14 Administrative cooperation in Switzerland

The competent bodies of the Confederation and the cantonal and communal police authorities shall be authorised to make available to each other the data necessary for the implementation of this order.

Article 15 Mutual Administrative Cooperation with foreign authorities

1. The competent federal authorities for implementation, control, crime prevention and criminal proceedings may collaborate with the competent foreign authorities and with international organisations and entities, and coordinate their enquiries, to the extent required by the implementation of this order or of equivalent foreign requirements and subject to the foreign authorities or international organisations or entities being bound by official secrecy.
2. They may also request the foreign authorities and international organisations or entities to make available relevant data. To that end, they shall be authorised to provide them with data concerning:

*Request
of info
from other
authorities*

¹ RS 313.0

- a. the nature, quantity, places of consignment and utilisation, and the use and consignees of goods and technologies;
 - b. persons taking part in the production, delivery or brokerage of goods or technologies.
3. If the foreign State grants reciprocity, they may make available, on their own initiative or on request, the data mentioned in paragraph 2 where the foreign authority provides an assurance that such data:
- a. shall be processed only for purposes consistent with this order, and
 - b. will be used in criminal proceedings only on condition that they are subsequently obtained in accordance with the provisions governing international judicial cooperation.
4. They may also make available the data in question to international organisations or entities if the conditions set forth in paragraph 3 are fulfilled, in which case the requirement for reciprocity may be waived.
5. The provisions concerning international judicial cooperation shall be subject to a reservation.

info from
other
authorities

Article 16 Information service

The Public Prosecutor of the Confederation shall ensure the operation of an information service responsible for the acquisition, processing and transmittal of the data necessary for implementation, the prevention of offences and criminal prosecutions.

Section 6: Final provisions

Article 17 Implementation

1. The Federal Council shall decree the implementing provisions.
2. The Federal Department of Public Economy shall be responsible for implementation.

Article 18 Referendum and entry into force

1. This order, which is of general scope, shall be subject to optional referendum.
2. The Federal Council shall specify the date of entry into force.
3. This order shall be in effect until the entry into force of the legislation concerning the control of property for civilian and military use, and of the new legislation on warfare equipment, but until 31 December 1999 at the latest.