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# **Principles of the Swiss Federal Council for the Armament Policy of the DDPS**

Of 24 October 2018

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(The original German text is authoritative)

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## **1 Contents and purpose**

The armament policy is a component of the Swiss security policy. The armament policy aims to ensure that the Armed Forces and other governmental institutions involved in state security are supplied with the necessary equipment and armaments as well as the required services on time, in line with economic principles, and in a transparent manner. In this document, the term “armament” therefore includes all measures and the means to meet the requirements for weapons, ammunition or war materials as well as the additional goods, services, buildings and expertise with particular reference to national defence or national security. It includes both the needs of the army and certain needs of governmental institutions such as the Federal Office of Police, the Border Guard Corps, the Federal Office for Civil Protection and the Federal Intelligence Service that operate in the areas of policing, border control and civil defence. In particular, armament includes equipment that is directly used for national defence and internal and external security. In a broader sense, the term “armament” will, in future, also refer to civilian materials for the above institutions.

The armament policy focuses on the army's needs in terms of crucial expertise, key security-relevant technology, technologically complex systems, goods, buildings and services as well as guaranteeing core industrial capabilities and capacities to ensure that the installed military systems operate reliably, are available for use and are sustainable.

In the following, the Federal Council explains the principles that apply when meeting the armament needs of the army and other state security agencies. It also demonstrates the main features of the collaboration between the Federal Department of Defence, Civil Protection and Sport (DDPS) and the private sector, and explains how access to crucial knowledge is to be facilitated and how its availability is to be guaranteed in times of tension concerning security policy or armed conflict. It also states which principles are being applied when collaborating with other countries and international organisations. Lastly, the principles for offset transactions are summarised.

The secondary documents for the armament policy substantiate individual aspects.

## **2 General conditions**

Today, only military superpowers have extensive national autonomy in the armament sector. All other countries are dependent on imports for armament, albeit to varying degrees. Switzerland, like most countries of a similar size, is heavily dependent. It is increasingly the case that civilian innovations also drive technological developments (such as digitalisation, for example) in the defence technology sector due to the greater economies of scale in the civilian markets. Systems are increasingly interlinked or linked to the manufacturer. This carries greater security risks, such as unexpected external control or external system monitoring. Technological developments in armament will continue to accelerate, and this means the companies in the security and defence industries continually need to regroup. It has become even

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more important to work with the private sector due to this paradigm shift away from the army and toward civilian companies and institutions as the actual drivers of technology.

The international armaments market is not an open market; it is often governed by national constraints. In some cases, necessary components are only released on the consent of foreign governments. In terms of technology, the army will become even more dependent on foreign countries with respect to key components where availability is subject to government approvals and controls.

Switzerland does not have an extensive security-relevant Technology and Industry Base (STIB). Apart from a few exceptions, system suppliers and system integrators are now only to be found at branches of foreign companies domiciled in Switzerland. These are often former Swiss companies that have been taken over by foreign groups. Switzerland's technological skills and industrial capabilities in the field of defence technology are largely made up of the knowledge and skills of innovative small and medium-sized private enterprises that partly manufacture technologically advanced subsystems or individual components for overall military and civilian systems. They are involved in national and international armaments projects on a competitive basis or according to national codes of practice and it is only by becoming leaders in technology under economic conditions and by producing convincing products that they can maintain their position in the market. They are subject to the restrictions of the War Material Act of 13 December 1996<sup>1</sup> and the Goods Control Act of 13 December 1996<sup>2</sup>.

To ensure key components and services can still be supplied in extraordinary situations and, in doing so, increase the security of supply in Switzerland under these circumstances, there is a need to pursue a strategy of increased international collaboration for armament as well as developing our own national skills and capabilities. An established practice of trustworthy cooperation will increase the likelihood of achieving the required degree of access. Potential collaborations must be identified as soon as possible during the armament procurement process. The focus is on identifying and monitoring trends in science, technology and the markets more systematically. However, the research, development and production of defence equipment is only possible to a limited extent.

This armament policy is based in particular on the Federal Council's report of 24 August 2016<sup>3</sup> regarding Switzerland's security policy as well as the law on public procurement. The requirements of the Swiss Army serve as the starting point. In addition, strengthening the STIB as well as competition and the equal treatment of bidders are key principles of the armament policy.

1 SR (Compendium of Swiss Federal Law) **514.51**

2 SR **946.202**

3 BBl (Federal Gazette) **2016** 7763

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## Main features of procurement

With regard to public procurement law, the Federal Government generally complies with the principles of competition and economic efficiency when procuring and constructing systems, goods, buildings and services.

In a highly specialised industry that is heavily dependent on government demand, competition among suppliers is an important factor for innovation and achieving the best price-performance ratio. This is why the DDPS is interested in a functioning market with multiple suppliers. To benefit from competition among suppliers, orders can be contracted out through an invitation procedure or advertised publicly. Competitive conditions are to be created as far as possible. However, this is not actually possible in situations involving monopolies or when only one valid tender offer is submitted. In this case, transparency in the pricing structure is achieved through the legal right to inspect the basis for the calculations. The choice of procurement procedure is based on the item to be procured and the legal provisions concerning public procurement.

The procurement of defence equipment is different from the procurement of purely civilian goods and services. To protect national security interests, the procurement of weapons, ammunition and other war material and the services and construction services required for defence and security is exempted from the international WTO obligations (Agreement on Government Procurement, GPA<sup>4</sup>). The procurement of civilian materials for military buyers is exempted from the WTO obligations if they have not been included in the GPA positive list or if they have been explicitly referred to as an exception<sup>5</sup>. In Switzerland, this is regulated by the Federal Law of 16 December 1994 and in the Directive of 11 December 1995 governing public procurement<sup>6</sup>.

This leeway in the application of the law must be used and deviations from the principles of competition and economic efficiency must be justified on a case-by-case basis. At the same time, priority is attached to the procurement of security-related goods and services and the preservation of key security-related technology and core industrial capabilities and capacities in Switzerland. The ability to integrate the goods and services to be procured into existing systems and the difference between initial and subsequent procurement are additional aspects that limit competition.

The escalating procurement and operating costs of modern weapons systems increasingly result in the need to choose whether to procure a few, multifunctional, complex and therefore usually expensive systems or large quantities of simpler and, generally speaking, more cost-effective systems with a more limited range of application. There must be a balance between defence policy requirements, a differentiated level of technological ambition and long-term financial viability.

The needs of the armed forces and other institutions involved in national security must be identified and planned at an early stage and as accurately as possible. At the

<sup>4</sup> Government Procurement Agreement of 15 April 1994 and SR **0.632.231.422**

<sup>5</sup> Appendix 1 of the Swiss Federal Ordinance on Public Procurement of 11 December 1995 and SR **172.056.11**

<sup>6</sup> SR **172.056.1**; SR **172.056.11**

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same time, the item to be procured must always be extensively evaluated over its entire service life.

To reduce costs, international standards should be applied wherever possible, and commercial and interoperable materials should be procured. Interoperable materials will improve and facilitate the army's collaboration with other armed forces in, for example, joint exercises with other countries' air forces or during peace-building missions. Buying potential can be further improved by establishing long-term and reliable partnerships and by pooling quantities.

In a broader sense, it must be ensured that the goods to be procured comply with international law and that the Swiss non-proliferation, disarmament and arms control policy developments are respected.

#### **4 Cooperation with private industry**

The DDPS maintains a wide-ranging and close working relationship with private service providers from Switzerland and abroad. These play a decisive role in terms of research, development, procurement and the operation and maintenance of goods and services in the armament sector. The purpose of this collaboration is to safeguard the supply of goods and services to the Armed Forces as well as ensure a high level of economic efficiency over the entire service life.

During the planning, procurement, utilisation and decommissioning phases, the DDPS pays attention to long-term and sustainable business relationships with industry. From as early as the planning phase, a business model that explicitly assigns the tasks, competencies, procedures and responsibilities is set as the basis for collaboration with external industrial service providers. The Federal Government maintains control of procurement programmes and projects; it is responsible for project management, the ability to assess risks (costs, time and quality), compliance with regulations and the results of negotiations (contracts) with industry.

Industry has no additional obligations to provide security-related services outside of the contractual agreements concluded with the Federal Government. The relations with key industrial partners in Switzerland must therefore be developed in a special way with respect to the security of supply. When necessary, the Federal Government retains the rights to use the intellectual property and infrastructures. It should be kept in mind that competition must not be obstructed or circumvented as a matter of principle. It is particularly important to investigate and seek strategic partnerships when systems with very long life cycles are included in procurement.

The federally-owned RUAG is the Swiss Army's most important industrial partner. The purpose of RUAG is to ensure the Armed Forces are equipped. However, RUAG has been faced with conflicting priorities since it was founded. On the one hand, it is a company that operates on the international market and competes with domestic and foreign industry. On the other hand, as a materials competence centre it ensures the operation of systems designated by the army and therefore has an exceptional position with respect to the DDPS.

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Following the unbundling of RUAG Holding AG, the other RUAG business units that almost exclusively work for the Swiss Army are to be separated and amalgamated to form their own Group company. As a rule, this company only provides services to support the systems used by the Swiss Army and is generally designated as the materials competence centre in the procurement of complex and security-related systems. In this way, it provides robust, transparent and cost-effective services for the army. The remaining business units are to be consolidated in a second Group company that will provide its services for civilian and military customers in Switzerland and abroad on a competitive basis.<sup>7</sup>

## **5 Security-relevant Technology and Industry Base (STIB) of Switzerland**

In many countries, an efficient technological and industrial base is a component of the armament policy and is consequently also part of the security and defence policy. Switzerland, in particular, must take this issue into account because, as a neutral state that does not belong to a defence alliance, it is not entitled to military support from other countries. The STIB consists of research institutions and companies that have expertise, skills and resources in the field of security and defence technology in Switzerland.

Most military equipment and services for the Swiss Army are procured via representatives of large international companies domiciled in Switzerland. This means that neither access to the technologies used in these systems nor the core industrial capabilities and capacities required to integrate, operate and maintain these in Switzerland are safeguarded in the long term or in all situations.

Complete independence from foreign countries is not a realistic goal for Switzerland. It is therefore important to concentrate on mastering selected technologies that are vital for national security. These “key security-related technologies” are regularly surveyed and assessed and, under federal control, are to be selectively maintained and enhanced so that dependency can be minimised. They currently include information, communication and sensor technologies. Core industrial capabilities and capacities must also be available in Switzerland to support an operational army. The STIB aims to provide essential services so that the systems deployed by the army can operate reliably and are sustainable.

However, the overall conditions on the global armaments market and the limited resources available in this country restrict the control of the Federal Government. As a basic principle, the domestic STIB and key security-related technology in particular are to be supported by means of measures that are compatible with the market and, above all, by boosting the competitiveness of Swiss research facilities and companies. The following control mechanisms are currently available to the Federal Government:

<sup>7</sup> Federal Council's resolutions of 21 March 2018 and 27 June 2018 on the unbundling of RUAG Holding AG

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- *Domestic procurement*: For armament, the law on public procurement provides procedures that permit national procurement as an instrument to support the national security-relevant technology and industrial base.
  - *Offset*: Offset transactions enable Swiss companies to gain access to the relevant expertise and markets despite the fact the procurements were made abroad. In addition, the key security-relevant technologies can be privileged in offset agreements.
  - *International cooperation*: Cooperation agreements concluded with selected partners can enable Swiss companies to participate in international research projects and procurements and provide them with access to technology and foreign markets.
  - *Applied research*: Applied research can be used to further develop the scientific and technical competences required to support the armament procurement process as a whole. To do this, the DDPS awards research contracts and develops the networks with universities, colleges, institutes, industry and the administration both in Switzerland and abroad.
  - *Promotion of innovation*: Closer cooperation between the DDPS and federal agencies tasked with promoting innovation and innovation policies (State Secretariat for Education, Research and Innovation (SERI), Innosuisse, the Swiss Science Council (SSC), the State Secretariat for Economic Affairs (SECO) and others) should create incentives to strengthen the STIB.
  - *Exchange of information with industry*: The DDPS is in regular communication with industry. This enables the STIB to cater for the army's needs.
  - *Export control policy*: An efficient STIB requires a competitive framework that also enables companies to supply competitive products and services internationally. The Federal Government establishes the framework for this with its legislation and licensing practices in exports of war material, dual-use goods and special military goods while complying with international legal requirements and remaining consistent with its priorities in terms of foreign policy and policies of neutrality.

## **6 International cooperation**

The increasing consolidation of the defence industry, the limited skills in terms of security technology and limited resources mean there is a growing need to collaborate more closely with other countries and seek partnerships within the framework of international organisations. These opportunities for collaboration are varied and extend to the exchange of information, research and development, the purchase of materials, logistics, support during tests and evaluations, and negotiating contractual agreements with external industrial service providers, for example. This collaboration is based on the needs of the army and the procurement agency. In military doctrine, the army identifies its skills gaps and technology needs and works with the procurement agency to define its procurement needs during the planning phase. If

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opportunities for collaboration are considered at the same time, it is easier to review the potential for international collaboration in good time.

Successful cooperation requires stable relationships. Above all, such relationships should be maintained with neighbouring countries, other countries and organisations in the European area and global leaders in technology. As the potential and success of collaborations are also dependent upon changing overall conditions with respect to armament in partner states and organisations, developments within an international context need to be monitored.

Switzerland is involved in project-related international collaborations in the European Defence Agency (EDA) and NATO platforms – provided that these are also available to Switzerland as a non-member – and makes use of these. User communities support the joint implementation of programs to maintain or increase the value of military systems. The ability of the Swiss Army to be deployed in a manner that is largely independent must be preserved at the same time. During the planning phase, it is standard practice to scrutinise armament cooperation in relation to security and defence policies.

International collaboration must respect the international legal provisions and the legal provisions governing neutrality, foreign and security policy interests and considerations involving policy of neutrality. To do this, the procurement agency maintains an institutionalized cooperation with the relevant authorities within the DDPS as well as Switzerland's foreign policy and foreign trade policy.

If it is questionable whether a specific project is compatible with foreign policy, the DDPS will review its assessment with the relevant bodies at the Federal Department of Foreign Affairs and the Federal Department of Economic Affairs, Education and Research. When there are substantial foreign policy implications, the procurement agency consults the relevant State Secretariats.

## **7 Offset**

The GPA only permits offset transactions for the procurement of war material. Offset transactions enable the national defence industry to access international markets that are often regulated. Switzerland makes use of this exemption.

If war material is procured abroad, the foreign supplier is usually required to fully offset the purchase price in Switzerland in the case of larger business transactions. There are two different types of offset transactions: In the case of direct transactions, the services provided by Swiss companies are incorporated directly into the defence equipment to be procured. In the case of indirect transactions, Swiss companies receive orders that are not directly linked to the defence equipment to be procured.

The aim of offset transactions is to make Swiss industry, especially STIB companies, more competitive. They can provide access to cutting-edge technology, make it possible to acquire expertise, generate additional export volumes and strengthen the position of Swiss industry on the international markets. Another intention is to

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narrow or close the security-relevant skills gaps in Swiss industry. It is possible to issue guidelines on distribution in the language regions.

To achieve successful offset transactions, the industry must be informed at an early stage and it is important to work closely with the industry organisations and interest groups. Requirements also stipulate that the industry involved must be competitive and that there must be substantial value creation in Switzerland. Offset transactions must not be used to pursue policies to maintain structures.

In offset transactions, not only the suppliers in the defence sector but also those who supply civilian capital goods and industrial services are taken into account. However, the Swiss STIB companies are to remain in the foreground. The attributable value of an offset transaction can be differentiated on the basis of the type of system to be procured and the compensation to be paid. However, one condition is that additional business must be involved in each case. Both procurement values and order thresholds are specified for efficiency.

Offset transactions often incur transaction costs (expenses for the parties obliged to take part in the offset and Swiss controlling). These costs are compensated by the fact that money spent abroad flows back into Switzerland creating economic benefits. If the respective conditions are over-regulated (for example, high quotas for certain sectors of industry or mandatory regional distribution), this could encourage structures to be maintained, regardless of their competitiveness. However, this would be contrary to the basic principle of Swiss offsets. If the management of offset transactions lacks transparency, there is a danger of overpricing or corruption. Management and controlling instruments such as publicly accessible registers, for example, should therefore be applied to support transparency. Within the context of developing the legal basis for the offset register, the DDPS examines how and to what extent maximum transparency can be achieved.

## **8 Communication**

This armament policy is accompanied by regular and open communication that takes place at an early stage. At the same time, close cooperation among the political entities, industry bodies, interest groups, industry and the administration must be maintained.

It should be noted that protecting the security-relevant interests of the DDPS on the one hand and the legitimate political and public entitlement to transparency on the other represent conflicting priorities in terms of armament. Communication should focus in particular on providing information about the current status of the planning, management and monitoring of procurement projects and joint projects, including opportunities for direct and indirect offsets.

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## **9 Implementation**

The DDPS is responsible for implementing the armament policy. It will ensure it is incorporated in its current internal regulations and arrange the issuing of the provisions required for implementation as well as internal and external coordination.

## **10 Final provisions**

These principles of the Swiss Federal Council for the armament policy of the DDPS will take effect on 1 January 2019. They replace the principles of 30 June 2010<sup>8</sup>.

<sup>8</sup> BB1 2010 5027, 2013 8913