
FEDERAL REPUBLIC OF GERMANY


GE.91-72604
Legislation in the Federal Republic of Germany on the
Prohibition of Biological Weapons

I. Implementation of the BW Convention

The States Parties to the "Convention on the Prohibition of the Development, Production
and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction"
are called upon to introduce legislation binding all persons or companies under their jurisdic-
tion to observe the restrictions each State undertook to adhere to in the Convention and
to provide for stringent penal regulations to ensure compliance.

The Federal Republic of Germany has fully met these requirements within its sphere of jur-
isdiction by way of very extensive and stringent prohibitions and penal regulations. The essen-
tce of the German regulations on the implementation of the Biological Weapons Con-
vention is briefly outlined below:

a) In the ratification law of 21 February 1983\(^1\) concerning the Biological Weapons Con-
vention of 10 April 1972, the Federal Republic of Germany prohibited the develop-
ment, production, stockpiling or any other form of acquisition or retention of:

(1) microbial or other biological agents, or toxins whatever their origin or method
of production, of types and in quantities that have no justification for prophyl-
lactic, protective or other peaceful purposes;

(2) weapons, equipment or means of delivery designed to use such agents or
otoxins for hostile purposes or in armed conflict.

Such actions were liable to prosecution under Sec. 16 of the old version of the War Wea-
pons Control Act which, inter alia, provided for a prison sentence of up to five years for the
unauthorized production, transfer or export of biological weapons. In the revised version of
the War Weapons control Act of 5 November 1990\(^2\), German legislation on biological wea-
pons, too, was substantially tightened.

1 (Federal Law Gazette II, page 132)
2 (Federal Law Gazette II, page 2428)
- It is prohibited to develop, produce, acquire or transfer, import, export, transport through federal territory, or trade in NBC weapons, or otherwise to exercise actual control over these weapons. A prison sentence of not less than two years shall be imposed if this provision is contravened intentionally.

- Furthermore, it is also prohibited to wilfully or recklessly encourage or induce another person to develop, produce etc. NBC weapons.

"Encourage" in this context means any supportive action, for example, the supply of systems or system components for the production of biological weapons or the provision of know-how. "Induce" means incite.

"Recklessness" corresponds in essence to gross negligence.

- These penal provisions not only apply in Germany, but also to acts committed abroad by natural persons possessing German nationality.

- Finally, the definition of biological weapons (No. 3 of the Schedule of War Weapons) has been completely revised. The revised version is consistent with fundamental elements in Article I of the Biological Weapons Convention and the definitions in Protocol III of the WEU Treaty. It also includes genetically altered microorganisms and is supplemented by a list of representative pathogens and toxins which are considered as potential biological agents of warfare.

The 7th Ordinance of 19 April 1991¹, amending the Schedule of War Weapons, removed a possible ambiguity in the definition of biological weapons by equating the microorganisms suitable for the formation of toxins (bacteria, fungi and microalgae) with the toxins themselves with regard to their function as agents of warfare.

- As most pathogens and toxins have a dual use capability, all "devices, components, appliances, facilities, substances and organisms which serve civilian purposes or scientific, medical or industrial research in the fields of pure and applied science" are excluded for the weapon definitions in a so-called civilian clause. The same applies to substances and organisms which serve prophylactic, protective or detection purposes.

¹ (Federal Law Gazette II, page 913)
Those organisms and substances which could be employed to produce biological weapons but which are excluded from the definition of biological weapons because of their civilian use and are, therefore, not prohibited, require an export licence. Systems and basic system components which are suited for reproducing microorganisms and viruses or for producing toxins or biological weapons also require an export licence.

b) The new version of the War Weapons Control Act of 1990 provided the Federal Republic of Germany with comprehensive penal provisions to prevent the production of biological weapons, as well as the proliferation of biological-weapon technology and know-how. The German definition of biological weapons (Annex) has been rendered both detailed and complete by combining an itemized list of 38 representative organisms and substances which could be employed to produce biological weapons with a general, abstract definition. The chosen national means of implementing the Biological Weapons Convention is, with regard to the scope of its penal regulations, consistent with the envisaged obligation to implement provisions concerning chemical weapons contained in Article VII of the draft Geneva CW Convention.
II. Prevention of BW Proliferation

- Tightening of the foreign trade and payments controls since the beginning of 1989 -

With a number of decisions taken since the beginning of 1989, the Federal Government has adopted a detailed concept to tighten the foreign trade and payments controls. The following is an overview of decisions, pertaining to BW controls:

1. Legislative measures

A. Ordinances issued by the Federal Government

a) The controls on the transfer of strategically relevant military technology adopted on 15.02.1989 have been tightened through the introduction of the Second Ordinance Amending the Foreign Trade and Payments Ordinance. It extends the controls on technology transfer, transit transactions and the transfer of not generally accessible knowledge relating to the production of sensitive goods to all countries of the world except the OECD member States. Before, a licence was necessary only for exports to Eastern countries.

b) On 15.02.1989 the Federal Cabinet also decided to tighten the definition for the requirement for an export licence for certain chemical plant (Article 5a Foreign Trade and Payments Ordinance together with List D), which has existed since 1984, and to introduce the requirement for an export licence for plant suited for the production of biological agents.

These Cabinet decisions were implemented with the introduction of new Lists D and E of the Export Control List by means of the 63rd Ordinance Amending the Export Control List.

---

1 (Federal Law Gazette I, page 341 - date of entry into force: 08.03.1989)
2 (Federal Gazette no. 139 a of 28.07.1989 - date of entry into force: 07.08.1989)
End-use controls for exports of goods pursuant to Lists D and E - in line with export controls for goods named in Lists A, B and C - have been introduced via the Fifth Ordinance Amending the Foreign Trade and Payments Ordinance.¹

c) The Twelfth Ordinance Amending the Foreign Trade and Payments Ordinance² underlines that an export licence is required for production documents even if the documents to be delivered facilitate only the production of components of goods that require an export licence.

d) Controls of foreign trade and payments in the military-strategic field have also been tightened insofar as the transfer of not generally accessible data processing programmes (software) is now also, as technology transfer, subject to a licence.³ Regardless of the Federal Government's decisions of 15.02. and 15.03.1989, this tightening has become necessary owing to the growing significance of software for technical processes of all kinds.

e) The Fourteenth Ordinance Amending the Foreign Trade and Payments Ordinance of 11.03.1991⁴ has tightened export control by two important provisions. On the one hand, the amended Ordinance introduces mandatory licensing of exports of dual-use items, where the exporter has knowledge of any intended military application. This subjects to licensing also such goods as have not been specifically designed for the military sector and are not covered by the COCOM lists for this reason. The Federal Government is thus the first Western country installing an additional export control system independent of the COCOM (§ 5c of the Foreign Trade and Payments Ordinance).

Furthermore, mandatory licensing is extended to include services associated with military projects in certain countries. This extension represents the logical continuation of the 1989/1990 tightening of the export control system already covering all services associated with missiles and any type of transfer of knowhow in respect of goods subject to licensing (§ 45b of the Foreign Trade and Payments Ordinance).

⁴ (Federal Gazette No. 50 of 13.03.1991, page 1725 - date of entry into force: 14.03.1991)
B. Laws

a) Article 34 of the Foreign Trade and Payments Act has been amended\(^1\) (Fifth Amending Act of 20.07.1990) to the effect that the range of punishment for violations has been widened from 3 to 10 years. In addition, not really actual violations but the mere threat to the external security and the foreign relations of the Federal Republic of Germany as well as to the peaceful coexistence of nations will in future be a sufficient reason for punishment.

In addition, the introduction of Article 7 paragraph 3 provides a general basis for the licensing of activities of German nationals abroad in connection with the development and production of technology projects.

b) With the Sixth Act Amending the Foreign Trade and Payments Act of 20.07.1990\(^2\) the maximum amount of fines pursuant to Article 33 paragraph 5 was doubled from DM 500,000 to DM 1,000,000 to ensure a more effective prosecution of violations. Under Article 26a resident companies are obliged to declare what they produce in the sensitive areas of nuclear, biological and chemical technology even if they do not intend to export their products. These amendments extend the export control system well into the preliminary stages of potential illegal exports. The relevant ordinance will be published soon.

c) The Act Improving the Control of Foreign Trade and Payments Transactions and Prohibiting Nuclear, Biological and Chemical Weapons (which entered into force in November 1990 after publication in the Federal Law Gazette) provides for sentences of up to 15 years’ imprisonment for anyone found guilty of participation in the production of nuclear, biological and chemical weapons. This covers German nationals who engage in or aid and abet such activities abroad. The minimum sentence for intentional violations was fixed at two years so that offenders can no longer reckon with suspended sentences.

---

\(^1\) Federal Law Gazette I, page 1457
\(^2\) Federal Law Gazette I, page 1460
2. Administrative measures

a) The improvement of the information basis of the licensing, supervisory and investigating authorities responsible for foreign trade and payments transactions by means of a reciprocal data exchange adopted by the Federal Government on 15.02.1989 has been implemented with amendments to the Foreign Trade and Payments Act, the Act on Fiscal Administration and the Atomic Energy Act. The relevant provisions are contained in the Act Improving the Control of Foreign Trade and Payments and Prohibiting Nuclear, Biological and Chemical Weapons, which entered into force in October 1990, as well as in the Sixth Act Amending the Foreign Trade and Payments Act of 20.07.1990¹. As regards export controls, the relevant ministries have agreed to concentrate the more intensive customs controls on exports to particularly sensitive countries.

In addition, the warning system with which the Federal Government tries to warn German industry against attempts from abroad to make illegal purchases has been extended. Since 1989 specific warnings have been given in about 20 cases.

Finally, the Federal Government has considerably increased the number of foreign trade and payments checks. While 114 checks were carried out in the first half of 1989 (in 51 cases, there was suspicion of offences against the legislation on foreign trade and payments ), the number of checks had increased to 442 in the first half of 1990 (with 145 suspicious cases). In many of these cases the Federal Government has called in the public prosecutor to clarify the circumstances.

b) With the decision of 28.11.1990 the Federal Government adopted "principles to assess the reliability of exporters of war weapons and armament-related goods". Due to the constantly increasing number of illegal technology transfers it has become necessary to conduct more investigations into the reliability of companies engaging in foreign trade and payments when an application is examined.

The principles, which will be published in the Federal Gazette, basically stipulate that

- the company applying for a licence must name in applications for exports of war weapons and armament-related goods a "person responsible for exports" who must belong to the management,

¹ (Federal Law Gazette I, page 1460 - date of entry into force: 26.07.1990)
- in the case of indications of violations of relevant provisions no decisions must be taken on export applications until the facts have been ascertained,

- in case of proven unreliability the application must be rejected unless the "person responsible for exports" is replaced and measures relating to personnel and organization remove doubts about the reliability of the company.

The "principles" represent rules of procedure governing the processing of applications by the licensing authorities for

- war weapons: Federal Ministry of Economics
- armament-related goods: Federal Office of Economics.

The "principles" will be applied without delay. Company boards of directors and supervisory boards will take the pertinent organizational decisions.
Annex:

BW Part of Weapons List Annex to the German Weapons Control Act

1. Biological combat agents

a) harmful insects and their toxic products

b) biological agents (microorganisms, viruses and toxins), regardless of their origin and mode of production, which are capable, by their very nature, of being used as a means of applying force in armed conflicts between states to cause disease in or the death of humans, plants and animals or to destroy material

aa) capable, by their very nature, of being used as warfare agents

(1) pathogens with several of the following properties:

* the onset of a severe disease or a severe injury
* a high rate of disease following infection
* resistance against environmental influences
* capability for use in the equipment and apparatus mentioned in paragraph 2 below

(2) toxins which are highly poisonous and extremely resistant against environmental influences

bb) capable, by their very nature, of being used as warfare agents are, above all, the pathogens of the following diseases:

<table>
<thead>
<tr>
<th>Glanders</th>
<th>Microorganisms (Bacteria)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Melioidosis</td>
<td>Pseudomonas mallei</td>
</tr>
<tr>
<td>Anthrax</td>
<td>Pseudomonas pseudomallei</td>
</tr>
<tr>
<td>Brucellosis</td>
<td>Bacillus anthracis</td>
</tr>
<tr>
<td>Tularemia</td>
<td>Brucella spp.</td>
</tr>
<tr>
<td>Human plague</td>
<td>Francisella tularensis</td>
</tr>
<tr>
<td>Typhoid fever</td>
<td>Yersinia pestis</td>
</tr>
<tr>
<td>Cholera</td>
<td>Salmonella typhi</td>
</tr>
<tr>
<td>Q fever</td>
<td>Vibrio cholerae</td>
</tr>
<tr>
<td>Psittacosis</td>
<td>Coxiella burnetii</td>
</tr>
<tr>
<td>Rocky Mountain spotted fever</td>
<td>Chlamydia psittaci</td>
</tr>
<tr>
<td>Typhus fever</td>
<td>Rickettsia rickettsii</td>
</tr>
<tr>
<td>Legionnaires’ disease</td>
<td>Legionella pneumophila</td>
</tr>
</tbody>
</table>
Human smallpox
Ebola infection
Marburg fever
Junin hemorrhagic fever
Lassa fever
Machupo hemorrhagic fever
African swine fever
Foot and mouth disease
Cattle plague
Dengue fever
Yellow fever
American equine encephalomyelitis

Monkey smallpox
Rift Valley fever
Chikungunya fever
influenza

Viruses
Variola major; Variola minor
Ebola virus
Marburg virus
Junin virus
Lassa virus
Machupo virus
African swine fever virus
Foot and mouth virus
Rinderpest virus
Dengue virus
Yellow fever virus
American equine encephalomyelitis virus (types East, West, Venezuela)
Monkey smallpox virus
Rift Valley fever virus
Chikungunya virus
Influenza virus

cc) capable, by their very nature, of being used as warfare agents are, above all, the following toxins:

bacterial toxins:
Botulinum toxins
Staphylococcal toxins

mycotoxins:
T2-Toxin
sàratoxin
verrucologen

endogenous toxins:
saxitoxin
cyanogenosine

plant or animal toxins:
ricin
tetrodotoxin

2. Equipment or apparatus especially designed for the use, for military purposes, of the biological warfare agents mentioned in paragraph 1 above.