

# Laws Prohibiting Investments in Controversial Weapons

Belgium • Ireland • Italy • Liechtenstein •  
Luxembourg • Netherlands • Spain • Switzerland

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# Comparative Summary

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This report describes the laws of eight European countries—Belgium, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Spain, and Switzerland—that prohibit investment in certain controversial weapons.

Controversial weapons are those that are either prohibited under international conventions or are deemed particularly controversial because of their humanitarian impact.<sup>1</sup> They include weapons of mass destruction such as nuclear, chemical and biological weapons, and weapons that fail to discriminate between civilians or combatants or cause disproportionate harm, such as cluster munitions or anti-personnel mines.<sup>2</sup>

International conventions that regulate or prohibit controversial weapons include those covering nuclear weapons,<sup>3</sup> chemical weapons,<sup>4</sup> biological weapons,<sup>5</sup> cluster munitions,<sup>6</sup> anti-personnel mines,<sup>7</sup> and inhumane conventional weapons.<sup>8</sup> One of these conventions, the Convention on Cluster Munitions, has language that has been widely interpreted as requiring States Parties to

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<sup>1</sup> ETHIX SRI ADVISORS, DEFINING CONTROVERSIAL WEAPONS FOR EUROPEAN INSTITUTIONAL INVESTORS 4 (Mar. 2011), [http://www.beama.be/nl/duurzame-icbs/actualiteit/Ehix\\_SRI\\_Advisor\\_-\\_Defining\\_Controversial\\_Weapons\\_for\\_Investors\\_-\\_2011\\_03.pdf](http://www.beama.be/nl/duurzame-icbs/actualiteit/Ehix_SRI_Advisor_-_Defining_Controversial_Weapons_for_Investors_-_2011_03.pdf), archived at <https://perma.cc/N6PX-M7VP>.

<sup>2</sup> *Id.*

<sup>3</sup> Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 729 U.N.T.S. 168, <https://treaties.un.org/doc/Publication/UNTS/Volume%20729/volume-729-I-10485-English.pdf>, archived at <https://perma.cc/3NFE-CZWM>.

<sup>4</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Jan. 13, 1993, 1974 U.N.T.S. 45, <https://treaties.un.org/doc/Publication/UNTS/Volume%201974/v1974.pdf>, archived at <https://perma.cc/Z9L9-VLLR>.

<sup>5</sup> Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 1015 U.N.T.S. 163, <https://treaties.un.org/doc/publication/UNTS/Volume%201015/v1015.pdf>, archived at <https://perma.cc/4T5F-E4HX>.

<sup>6</sup> Convention on Cluster Munitions, Oct. 30, 2008, 2688 U.N.T.S. 39, <https://treaties.un.org/doc/Publication/CTC/26-6.pdf>, archived at <https://perma.cc/9L93-Z4VQ>.

<sup>7</sup> Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Sept. 18, 1997, 2056 U.N.T.S. 211, <https://treaties.un.org/doc/Publication/UNTS/Volume%202056/v2056.pdf>, archived at <https://perma.cc/75E5-HNT5>.

<sup>8</sup> Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Oct. 10, 1980, 1342 U.N.T.S. 137, <https://treaties.un.org/doc/Publication/UNTS/Volume%201342/v1342.pdf>, archived at <https://perma.cc/R46E-ZKJT>. Protocols to this Convention cover non-detectable fragments; mines, booby-traps, and similar devices; incendiary weapons; blinding laser weapons; and explosive remnants of war. *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects*, UNITED NATIONS OFFICE FOR DISARMAMENT AFFAIRS, <http://disarmament.un.org/treaties/t/ccwc> (last visited Nov. 15, 2016), archived at <https://perma.cc/D2SZ-5STE>.

prohibit investment in producing such weapons.<sup>9</sup> All of the countries surveyed in this report have enacted legislation on investment in production in cluster munitions. In addition to these countries surveyed here that have enacted legislation, many other States Parties to the Cluster Munitions Convention have issued ministerial or interpretive statements to the effect that investment in production of cluster munitions is prohibited by the Convention.<sup>10</sup>

In addition to prohibiting investments in cluster munitions, some of the surveyed countries prohibit investment in other weapons. Switzerland and Liechtenstein prohibit investment in nuclear, biological, or chemical weapons, anti-personnel missiles, and cluster munitions. Ireland's and Spain's prohibitions cover cluster munitions, explosive bomblets, and anti-personnel mines. Belgium's prohibition covers anti-personnel mines, cluster munitions, and munitions or armor plating containing uranium. Luxembourg and Italy currently prohibit investment in cluster munitions, but pending legislation would extend prohibitions to anti-personnel mines.

Most of the surveyed countries prohibit both public and private investment in prohibited weapons, but Ireland's legislation only covers investment by public entities.

Some of the surveys also provide information on the types of prohibited investment activity, the penalties for violations, lists of companies affected, governmental bodies responsible for overseeing the legislation, and additional relevant information that was located.

No principles were identified within the present international law framework that displaces the authority of national governments to regulate investment services and activities within their jurisdictions in areas implicating humanitarian concerns. Likewise, no North Atlantic Treaty Organization (NATO) treaty commitments were found that obligate NATO members to permit investing in weapons they consider contrary to international humanitarian law. Article 5 of the NATO Charter obligates member states to assist with collective defense in the event of armed attack of another member state, but it requires only that each party take "such action as it deems necessary" in such circumstances, permitting members to determine their own forms of participation in collective defense.<sup>11</sup>

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<sup>9</sup> Convention on Cluster Munitions art. 1(1)(c) ("Each Party undertakes never under any circumstances to: . . . (c) Assist [or] encourage . . . anyone to engage in any activity prohibited to any State Party to this Convention."). Advocates argue that financing the production of cluster munitions constitutes assistance or encouragement. ROOS BOER ET AL., WORLDWIDE INVESTMENTS IN CLUSTER MUNITIONS: A SHARED RESPONSIBILITY 10 (June 2016), <https://www.paxforpeace.nl/media/files/worldwide-investments-in-cluster-munitions-pax-june-2016.pdf>, archived at <https://perma.cc/4957-GCN6>.

<sup>10</sup> BOER ET AL., *supra* note 9, at 209–16 (listing twenty-eight jurisdictions that have issued statements).

<sup>11</sup> North Atlantic Treaty art. 5, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243, available at <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000004-0828.pdf>, archived at <https://perma.cc/PAN3-5GM9>.

# Belgium

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## I. Law Prohibiting the Financing of Prohibited Weapons

Belgium adopted a law regulating economic activities related to weapons, commonly referred to as the Law on Weapons (Loi sur les Armes), in 2006.<sup>1</sup> This Law was initially silent on the topic of financial involvement in companies that manufacture prohibited weapons, but it was amended in 2007 to prohibit investment in, or the financing of, any company involved in the sale or use of certain prohibited ammunition and war materiel such as anti-personnel mines, cluster munitions, and depleted uranium munitions and armor.<sup>2</sup>

Engaging in the activities prohibited by the Law on Weapons is punishable by a jail sentence of between one month and five years, and/or a fine of between €100 (about US\$111) and €25,000 (approximately US\$27,747).<sup>3</sup>

## II. Prohibited Investments

Activities that would make a company subject to this prohibition include the “manufacture, use, repair, exhibition for purpose of selling, sale, distribution, import or export, warehousing or transport of anti-personnel mines, cluster munitions, and/or inert munitions or armor plating containing depleted uranium or any other type of industrial uranium.”<sup>4</sup> The Law provides that the Belgian government is to publish a list of three types of companies: (a) those that engage in the prohibited activities, (b) those that own more than 50% of the shares in companies that engage in these activities, and (c) collective investment organizations (*organismes de placement collectif*) that own financial instruments of a company listed under criterion (a) or (b).<sup>5</sup>

The Law on Weapons prohibits any financial support for a company on this list, including bank loans and bank guarantees, and the acquisition of financial instruments (such as shares) issued by

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<sup>1</sup> Loi du 8 juin 2006 réglant des activités économiques et individuelles avec des armes [Law of 8 June 2006 Regulating Individual and Economic Activities with Weapons] (as amended to May 13, 2016), [http://www.ejustice.just.fgov.be/cgi\\_loi/loi\\_a.pl?language=fr&caller=list&cn=2006060830&la=f&fromtab=loi&sql=dt=%27loi%27&tri=dd+as+rank&rech=1&numero=1](http://www.ejustice.just.fgov.be/cgi_loi/loi_a.pl?language=fr&caller=list&cn=2006060830&la=f&fromtab=loi&sql=dt=%27loi%27&tri=dd+as+rank&rech=1&numero=1), archived at <https://perma.cc/X6BL-F8K8>.

<sup>2</sup> *Id.* art. 8; Loi du 20 mars 2007 interdisant le financement de la fabrication, de l’utilisation ou de la détention de mines antipersonnel et de sous-munitions [Law of 20 March 2007 Prohibiting the Financing and Manufacturing, the Use or the Possession of Anti-Personnel Mines and Sub-Munitions], [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&table\\_name=loi&cn=2007032048](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2007032048), archived at <https://perma.cc/G3G2-F4E2>.

<sup>3</sup> Loi du 8 juin 2006, art. 23.

<sup>4</sup> *Id.* art. 8.

<sup>5</sup> *Id.*

that company.<sup>6</sup> If such financial support was already in place when the Law came into effect, it must be withdrawn as much as contractually possible.<sup>7</sup>

Although the Belgian government was supposed to publish the list of companies by May 1, 2008, it had not yet done so as of June 2015,<sup>8</sup> and it still does not appear to have done so as of the date of this report.

In response to a question from a senator in 2008, the Vice-Prime Minister and Minister of Finance stated that “the absence of such a public list obviously does not prevent the concrete application of the legislation.”<sup>9</sup>

### III. Exemptions

Article 8 of the Law on Weapons does not apply to index funds, defined by the law as “investment firms whose purpose, as defined by their articles of incorporation or management regulations, is to follow the composition of a particular index of stocks or bonds.”<sup>10</sup>

Furthermore, the Law on Weapons authorizes the financing of specific projects, even when they involve companies engage in the activities prohibited by article 8 of the Law on Weapons, so long as the projects have nothing to do with these activities.<sup>11</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Question No. 381, *Questions et réponses écrites* [Written Questions and Answers], CHAMBRE DES REPRÉSENTANTS DE BELGIQUE [BELGIAN HOUSE OF REPRESENTATIVES], QR VA 54 032 (July 6, 2015), p. 37, <http://www.lachambre.be/QRVA/pdf/54/54K0032.pdf>, archived at <https://perma.cc/H6JW-MU8G>.

<sup>9</sup> Question No. 4-306, *Questions Orales* [Verbal Questions], SÉNAT DE BELGIQUE [BELGIAN SENATE], *Annales, Séances plénières* [Annals, Plenary Sessions], May 22, 2008, Afternoon Session, No. 4-30, p. 35, <https://www.senate.be/www/webdriver?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=67109926>, archived at <https://perma.cc/Q2Q4-LP6Q>.

<sup>10</sup> Loi du 8 juin 2006, art. 8.

<sup>11</sup> *Id.*

# Ireland

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## I. Introduction

Ireland was actively involved in the negotiations that resulted in the adoption of the Convention on Cluster Munitions.<sup>1</sup> Ireland was described as the “driving force behind” the process<sup>2</sup> and as bearing “a great deal of the responsibility for the successful outcome of the negotiations and the strength of the convention.”<sup>3</sup> Ireland signed and ratified the Convention on December 3, 2008.<sup>4</sup> Ireland is also a party to the Anti-Personnel Mine Ban Convention,<sup>5</sup> which it ratified on December 3, 1997.<sup>6</sup> These treaties have been implemented into Ireland’s national law through the Cluster Munitions and Anti-Personnel Mines Act 2008.<sup>7</sup>

## II. Types of Prohibited Investment and Financing Activity

The Cluster Munitions and Anti-Personnel Mines Act 2008 prohibits the investment of public money, either directly or indirectly, in any company involved in the manufacture of prohibited munitions or components.<sup>8</sup> Public money is defined in the Act as “moneys provided by the Oireachtas out of the Central Fund”;<sup>9</sup> thus, the application does not extend to private investors.

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<sup>1</sup> Convention on Cluster Munitions, Oct. 30, 2008, 2688 U.N.T.S. 39, <https://treaties.un.org/doc/Publication/CTC/26-6.pdf>, archived at <https://perma.cc/9L93-Z4VQ>.

<sup>2</sup> ROOS BOER ET AL., WORLDWIDE INVESTMENTS IN CLUSTER MUNITIONS: A SHARED RESPONSIBILITY ¶ 2.3.2 (June 2016), <https://www.paxforpeace.nl/media/files/worldwide-investments-in-cluster-munitions-pax-june-2016.pdf>, archived at <https://perma.cc/4957-GCN6>.

<sup>3</sup> *Ireland Cluster Munition Ban Policy*, LANDMINE AND CLUSTER MUNITION MONITOR (Sept. 1, 2013), [http://archives.the-monitor.org/index.php/cp/display/region\\_profiles/theme/2717#\\_ftn4](http://archives.the-monitor.org/index.php/cp/display/region_profiles/theme/2717#_ftn4), archived at <https://perma.cc/V8L5-LC99>.

<sup>4</sup> *Treaties, States Parties and Commentaries, Convention on Cluster Munitions*, INT’L COMM. OF THE RED CROSS, [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp\\_viewStates=XPages\\_NORMStatesParties&xp\\_treatySelected=620](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=620) (last visited Nov. 7, 2016), archived at <https://perma.cc/3GH4-AGK4>.

<sup>5</sup> Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Sept. 18, 1997, 2056 U.N.T.S. 211, <https://treaties.un.org/doc/Publication/UNTS/Volume%202056/v2056.pdf>, archived at <https://perma.cc/75E5-HNT5>.

<sup>6</sup> *Treaties, States Parties and Commentaries, Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*, INT’L COMM. OF THE RED CROSS, [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp\\_viewStates=XPages\\_NORMStatesParties&xp\\_treatySelected=580](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=580), archived at <https://perma.cc/BZL8-X9UT>.

<sup>7</sup> Cluster Munitions and Anti-Personnel Mines Act 2008, No. 20 of 2008, <http://www.irishstatutebook.ie/eli/2008/act/20/enacted/en/print#sec1>, archived at <https://perma.cc/6LWK-FGKQ>.

<sup>8</sup> *Id.* § 12.

<sup>9</sup> *Id.* § 11.

A prohibited munition is defined as a “cluster munition, explosive bomblet or anti-personnel mine.”<sup>10</sup>

When public money is directly invested in a company that is, or later becomes, a company involved in manufacturing prohibited munitions, the investor must establish that the company intends to stop its involvement.<sup>11</sup> If the investor is not satisfied that the company will cease its involvement in these activities, it must divest the investment in that company.<sup>12</sup>

Indirect investment through collective investment undertakings and investment products are also addressed in the Act. Public money may only be invested in these undertakings and products where the investor has satisfactorily established that “there is not a significant probability” that public money will be invested in a company involved in the manufacture of prohibited munitions. In cases where public money is invested in a collective investment undertaking or investment product that invests in a covered company, the investor must establish to his or her satisfaction that the company intends to stop its involvement. If the investor is not satisfied that this criteria can be met the collective investment undertaking or investment product must divest itself of the investment in the company involved in the manufacture of prohibited munitions.<sup>13</sup> Additionally, there must be a significant probability that the collective investment or investment product will not invest public money in a munitions company again. The investor also has the option of divesting itself of its investment in the collective investment undertaking or investment product, provided that all contractual obligations are taken into account.<sup>14</sup>

### III. Exemptions

The Act does not extend to “contracting derivative financial instruments based on a financial index,”<sup>15</sup> and this exemption has been described as weakening the law because the investments are permitted even when they contain instruments connected to companies involved in prohibited munitions.<sup>16</sup> As noted above, the Act only applies to the investment of public money, so private investors continue to be free to invest in companies that would otherwise be prohibited under the Act.

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<sup>10</sup> *Id.*

<sup>11</sup> “Investor” is defined in section 11 of the 2008 Act as “a person or body responsible for the investment of public moneys owned by a Minister of the Government.”

<sup>12</sup> *Id.* § 13, <http://www.irishstatutebook.ie/eli/2008/act/20/enacted/en/print#sec1>, archived at <https://perma.cc/6LWK-FGKQ>.

<sup>13</sup> *Id.* § 14.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* § 15.

<sup>16</sup> BOER ET AL., *supra* note 2, ¶ 2.3.2.

## IV. Penalties

As noted, the Act's prohibitions on investment only extend to public funds. The Act's penalty provisions are contained in sections 16–19 and address parts of the Act other than those of public investment, which are matters of public administration.

## V. Oversight

The Act does not specify a specific government branch or department that is responsible for overseeing that its provisions are followed. Given that an “investor” covered by the act is defined as a “person or body responsible for the investment of public moneys owned by a Minister of the Government,”<sup>17</sup> it appears that oversight would be within the government department that oversees the investor. For example, the Ireland Strategic Investment Fund is overseen by the National Treasury Management Agency.<sup>18</sup>

The government department in charge of Ireland's foreign affairs is the Department of Foreign Affairs and Trade.<sup>19</sup> The parliamentary committee that would likely be responsible for considering amendments to the Act would be the Joint Committee on Foreign Affairs and Trade, and Defence.<sup>20</sup>

## VI. Government's List of Companies Affected by the Legislation

In the months prior to the enactment of the Cluster Munitions and Anti-Personnel Mines Act the Irish government requested that the Irish National Pension Reserve Fund withdraw €27 million (approximately US\$30 million) from six international companies linked to the manufacture of cluster munitions.<sup>21</sup> The Irish National Pension Reserve Fund complied and disinvested its funds from these companies.<sup>22</sup> The Irish government later transferred all monies from this pension fund to the Ireland Strategic Investment Fund (ISIF)<sup>23</sup> in 2014 after the government decided that it wanted to change the pension fund into an investment fund, to “support economic activity and employment.”<sup>24</sup>

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<sup>17</sup> Cluster Munitions and Anti-Personnel Mines Act 2008, No. 20 of 2008, § 11.

<sup>18</sup> Home, NATIONAL TREASURY MANAGEMENT AGENCY, <http://www.ntma.ie> (last visited Nov. 1, 2016), archived at <https://perma.cc/RVP8-85WF>.

<sup>19</sup> *Our Role and Policies*, DEPARTMENT OF FOREIGN AFFAIRS AND TRADE, <https://www.dfa.ie/our-role-policies/> (last visited Nov. 7, 2016), archived at <https://perma.cc/EM42-NJW8>.

<sup>20</sup> *Joint Committee on Foreign Affairs and Trade, and Defence*, HOUSES OF THE OIREACTHAS, [http://www.oireachtas.ie/parliament/oireachtasbusiness/committees\\_list/foreign-affairs-trade-defence/](http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/foreign-affairs-trade-defence/) (last visited Nov. 7, 2016), archived at <https://perma.cc/BB6H-89T5>.

<sup>21</sup> *Ireland, Cluster Munition Ban Policy*, LANDMINE & CLUSTER MUNITION MONITOR (Aug. 5, 2015), <http://www.the-monitor.org/en-gb/reports/2015/ireland/cluster-munition-ban-policy.aspx>, archived at <https://perma.cc/RR38-TST3>.

<sup>22</sup> BOER ET AL., *supra* note 2, ¶ 2.3.2.

<sup>23</sup> IRELAND STRATEGIC INVESTMENT FUND, <http://www.isif.ie>, archived at <https://perma.cc/2B9S-S3AA>.

<sup>24</sup> BOER ET AL., *supra* note 2, ¶ 2.2.23.

The ISIF has published a list of companies that are excluded from the Fund as mandated by the Cluster Munitions and Anti-Personnel Mines Act 2008. The list currently contains nineteen companies, but it is kept under review and updated as necessary. The companies listed are: Aryt Industries Ltd., Doosan Corporation, Hanwha Corporation, Poongsan Holdings Corporation, Poongsan Corporation, Hanwha Techwin Co. Ltd. (previously Samsung Techwin), Orbital ATK Inc (previously Alliant Techsystems), Lockheed Martin, L-3 Communications, Raytheon, Textron, Aselsan AS, Ashot Ashkelon, China Spacesat China, Aerospace International Holdings, Motovilikha Plants JSC, Norinco International Cooperation Ltd., S&T Dynamics Co. Ltd., and S&T Holdings Co. Ltd.<sup>25</sup> The list does not specify the countries that the listed companies are from.

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<sup>25</sup> *Cluster Munitions*, IRELAND STRATEGIC INVESTMENT FUND, <http://www.isif.ie/how-we-invest/responsible-investment/cluster-munitions> (last visited Nov. 1, 2016), archived at <https://perma.cc/X796-4LVZ>; see also NATIONAL TREASURY MANAGEMENT AGENCY, INFORMATION SOUGHT BY THE PUBLIC ACCOUNTS COMMITTEE FOLLOWING THE NTMA'S APPEARANCE BEFORE THE COMMITTEE App. E (July 21, 2016), <http://www.oireachtas.ie/parliament/media/committees/pac/correspondence/2016-meeting1832909/PAC32-70-B-----Conor-OKelly-NTMA-Follow-up.pdf>, archived at <https://perma.cc/7ZZP-6DV8> (providing ISINs for the listed companies).

# Italy

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## **I. Legislation Prohibiting Certain Types of Investments Related to Cluster Munitions**

In 2011 Italy adopted Law No. 95 ratifying and implementing the 2008 Oslo Convention on Cluster Munitions.<sup>1</sup> Law No. 95 of 2011 bans the provision of financial assistance to activities related to the development, production, acquisition, storage, retention, or transfer of cluster munitions. In particular, Law No. 95 of 2011 provides that,

[w]hoever uses . . . develops, produces, acquires in any way, stores, retains, or transfers, directly and indirectly, cluster munitions or parts thereof, or financially assists, encourages or induces others to engage in such activity, is punished with imprisonment from three to twelve years and a fine of 258,228 Euro to 516,456 Euro [approximately US\$283,402 to 572,771].<sup>2</sup>

## **II. Proposed Expansion of Existing Legislation**

On October 6, 2016, an Italian Senate commission unanimously approved Bill No. 57,<sup>3</sup> which would prohibit all types of financial support to companies that operate in any phase of the production and commercialization of landmines and cluster munitions and submunitions, as well as those companies that engage in research into, and the manufacture, sale and transfer, exportation, importation, and possession of, such weapons.<sup>4</sup> In order to become law, Bill No. 57 would have to be approved by the entire Senate, then by the Chamber of Deputies, and promulgated by the President of the Republic.<sup>5</sup>

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<sup>1</sup> Legge 14 giugno 2011, n. 95 Ratifica ed esecuzione della Convenzione di Oslo sulla messa al bando delle munizioni a grappolo, fatta a Dublino il 30 maggio 2008, nonche' norme di adeguamento dell'ordinamento interno [Law No. 95 of June 14, 2011, Ratifying and Implementing the Oslo Convention on Cluster Munitions, made in Dublin on May 30, 2008, as well as Implementing Provisions] art. 7(1), GAZZETTA UFFICIALE [G.U.] No. 153, July 4, 2001, <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2011-06-14:95>, archived at <https://perma.cc/JZX3-8MKP>.

<sup>2</sup> Translation provided at *Worldwide Investments in Cluster Munitions: A Shared Responsibility*, PAX (June 2016), <https://www.paxforpeace.nl/media/files/worldwide-investments-in-cluster-munitions-pax-june-2016.pdf>, archived at <https://perma.cc/U6YU-9257>.

<sup>3</sup> Disegno di legge [Bill] No. 57, XVII Legislatura [Legislature], Senato della Repubblica [Senate of the Republic], <http://www.senato.it/leg/17/BGT/Schede/FascicoloSchedeDDL/ebook/39361.pdf>, archived at <https://perma.cc/3BT8-QQMY>.

<sup>4</sup> Press Release, Mauro Maria Marino, President of the Permanent Commission on Finances and the Treasury, Mine antiuomo, arriva il sì della Commissione [Landmines, The Yes of the Commission Arrives] (Oct. 6, 2016), <http://mauromariamarino.it/mine-antiuomo-arriva-si-della-commissione>, archived at <https://perma.cc/FK9W-3NRD>.

<sup>5</sup> *Iter Legislativo: come si approvano le leggi in Italia?* [Legislative Path: How Laws Are Approved in Italy], PORTAL DIRITTO (Aug. 19, 2005), <http://www.portaldiritto.com/iter-legislativo.htm>, archived at <https://perma.cc/3BZK-JYTH>.

# Liechtenstein

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The tax treaty that is in force between Switzerland and Liechtenstein makes certain Swiss laws applicable in Liechtenstein. According to a proclamation of October 25, 2016, the Swiss War Material Act,<sup>1</sup> with the exception of a few provisions,<sup>2</sup> is one of the laws applicable in Liechtenstein.<sup>3</sup> Liechtenstein therefore also prohibits the direct financing of the development, manufacture, or acquisition of prohibited war material, as well as indirect financing if the indirect financing is used to circumvent the prohibition on direct financing.<sup>4</sup> Anyone who intentionally violates the prohibition of financing and cannot claim an exemption is liable to a custodial sentence not exceeding five years.<sup>5</sup>

The government of Liechtenstein is designated as the licensing authority for the War Material Act.<sup>6</sup> No governmental lists could be located that provide for covered companies.

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<sup>1</sup> Bundesgesetz über das Kriegsmaterial (Kriegsmaterialgesetz, KMG) [War Material Act], Dec. 13, 1996, SYSTEMATISCHE RECHTSSAMMLUNG [SR] [SYSTEMATIC COLLECTION OF LAWS] 514.51, <https://www.admin.ch/opc/de/classified-compilation/19960753/201302010000/514.51.pdf>, archived at <http://perma.cc/2E49-3K33>, unofficial English translation available at <https://www.admin.ch/opc/en/classified-compilation/19960753/201302010000/514.51.pdf>, archived at <http://perma.cc/G49X-BDXT>.

<sup>2</sup> Liechtenstein does not apply articles 4, 16a, 16b; article 30, para. 2, sentence 1; or article 32 of the Swiss War Material Act, nor the provisions regarding brokerage, transfer of intellectual property, including know-how, or the granting of rights thereto.

<sup>3</sup> Kundmachung vom 25. Oktober 2016 der aufgrund des Zollvertrages im Fürstentum Liechtenstein anwendbaren schweizerischen Rechtsvorschriften (Anlagen I und II) [Proclamation of October 25, 2016, Concerning the Swiss Laws which Are Applicable in the Principality of Liechtenstein in Accordance With the Tax Treaty], LIECHTENSTEINISCHES LANDESGESETZBLATT NUMMER [LIECHTENSTEIN LGBL.-NR.] [LIECHTENSTEIN OFFICIAL LAW GAZETTE NO.] 2016.329, <https://www.gesetze.li/lilexprod/ifshowpdf.jsp?lgblid=2016329000&version=1&signed=n&tablesel=0>, archived at <http://perma.cc/DQ7S-EJGP>.

<sup>4</sup> Gesetz vom 10. Dezember 2008 über die Vermittlung von und den Handel mit Kriegsmaterial (Kriegsmaterialgesetz; KMG) [War Material Act], LIECHTENSTEIN LGBL.-NR. 2009.039, as amended, arts. 7b, 7c, <https://www.gesetze.li/lilexprod/ifshowpdf.jsp?lgblid=2009039000&version=3&signed=n&tablesel=0>, archived at <http://perma.cc/9UDD-ZV6S>.

<sup>5</sup> *Id.* art. 29b.

<sup>6</sup> Verordnung über das Kriegsmaterial (Kriegsmaterialverordnung, KMV) [War Material Ordinance], LIECHTENSTEIN LGBL.-NR. 2009.073, as amended, art. 9, <https://www.gesetze.li/lilexprod/ifshowpdf.jsp?lgblid=2009073000&version=2&signed=n&tablesel=0>, archived at <http://perma.cc/LR8F-N9UL>.

# Luxembourg

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## I. Law Prohibiting the Financing of Cluster Munitions

Luxembourg prohibited the financing of cluster munitions in 2009, in the law ratifying the Convention on Cluster Munitions.<sup>1</sup> The law simply provides that “it is forbidden for any natural or legal person to knowingly finance cluster munition weapons or explosive submunitions.”<sup>2</sup> Anyone guilty of financing cluster munitions or explosive submunitions may face between five and ten years of jail time, and/or a fine of between €25,000 (about US\$27,840) and €1,000,000 (approximately US\$1,113,520).<sup>3</sup>

## II. An Incomplete Law

This law raises several questions. What qualifies as “financing”? Does indirect investment qualify? How much due diligence would an investor be expected to conduct in order to avoid “knowingly” financing cluster munitions? The government of Luxembourg does not appear to have issued any implementing orders or regulations, or any sort of official instructions or explanations, that would answer such questions. Furthermore, the law does not provide for any supervision or monitoring mechanism.<sup>4</sup>

Luxembourg’s General Pension Common Compensation Fund (Fonds de compensation commun au régime général de pension) publishes a list of companies that are excluded from its investment portfolios, and several companies are on this list due to involvement in cluster munitions.<sup>5</sup> However, this list does not appear to have any binding force outside of the Compensation Fund itself. Furthermore, many companies on that list are not involved with cluster munitions, but are listed because of other practices deemed unethical by the Compensation Fund, even if those practices are not necessarily illegal.

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<sup>1</sup> Loi du 4 juin 2009 portant approbation de la Convention sur les armes à sous-munitions, ouverte à la signature à Oslo le 3 décembre 2008 [Law of 4 June 2009 Approving the Convention on Cluster Munitions, Open for Signature in Oslo on 3 December 2008], <http://www.legilux.public.lu/leg/a/archives/2009/0147/a147.pdf#page=2>, archived at <https://perma.cc/PSQ7-6595>.

<sup>2</sup> *Id.* art. 3 (all translations by author).

<sup>3</sup> *Id.* art. 4.

<sup>4</sup> ROOS BOER, HESTER BRINK, SUZANNE OOSTERWIJK & MICHEL RIEMERSMA, WORLDWIDE INVESTMENT IN CLUSTER MUNITIONS, A SHARED RESPONSIBILITY 199 (PAX, June 2016 Update), available at <https://www.paxforpeace.nl/media/files/worldwide-investments-in-cluster-munitions-pax-june-2016.pdf>, archived at <https://perma.cc/STD9-33V4>.

<sup>5</sup> *FDC Exclusion List*, FONDS DE COMPENSATION COMMUN AU RÉGIME GÉNÉRAL DE PENSION [GENERAL PENSION COMMON COMPENSATION FUND] (May 15, 2016), [http://www.fdc.lu/fileadmin/file/fdc/Liste\\_d\\_exclusion\\_20160515.pdf#pageMode=bookmarks](http://www.fdc.lu/fileadmin/file/fdc/Liste_d_exclusion_20160515.pdf#pageMode=bookmarks), archived at <https://perma.cc/RBN8-WCA4>.

### III. Potential Extension of Prohibition to Other Types of Controversial Weapons

Luxembourg may, in the future, adopt legislation banning investments in antipersonnel mines. In March 2016, the Luxembourg Minister of Foreign and European Affairs, Jean Asselborn, made a foreign policy declaration before Parliament in which he stated that “the government takes very seriously the issues related to the financing of arms trafficking, and is thinking about replicating the prohibition on financing cluster bombs in the context of the Convention against Anti-personnel Mines, therefore going beyond the text of the Conventions.”<sup>6</sup>

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<sup>6</sup> Communiqué [Press Release], Gouvernement [Luxembourg Government] Déclaration sur la politique étrangère et européenne de Jean Asselborn à la Chambre des députés [Declaration on Foreign and European Policy by Jean Asselborn to the Chamber of Deputies] (Mar. 8, 2016), <http://www.gouvernement.lu/5787181/08-asselborn-declaration-chd>, archived at <https://perma.cc/4WT4-RLQJ>.

# Netherlands

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In January 2013, the Netherlands amended the Market Abuse (Financial Supervision Act) Decree to include new obligations for Dutch financial institutions regarding cluster munitions. Financial institutions must now take adequate measures to ensure that they do not conduct or commission transactions for the purpose of acquiring or offering a financial instrument that has been issued by a company that produces, sells, or distributes cluster munitions or critical components of them, and that they do not provide loans to or acquire nonmarketable holdings in the capital of such companies.<sup>1</sup> The rules also prohibit indirect investments via parent (holding) companies that hold more than 50% of the share capital of prohibited companies.<sup>2</sup> The prohibition does not apply to clearing institutions.<sup>3</sup>

There are three exceptions to the prohibition. A financial institution is allowed to execute transactions based on an index if less than 5% represent individual companies that are subject to the investment prohibition. In addition, the prohibition does not apply to transactions in a collective investment scheme if less than 5% of the investments are in individual companies that are subject to the investment prohibition. Lastly, investments can be made in clearly described projects of cluster munition companies insofar as the financing is not used for the manufacture, sale, or distribution of cluster munitions.<sup>4</sup>

The implementation of the law is overseen by the Financial Market Authority (Autoriteit Financiële Markten, AFM). The AFM has published “Frequently Asked Questions” on the interpretation and monitoring of the prohibition on its website.<sup>5</sup> In case of a violation of the prohibition on investing in or granting loans to prohibited companies, the AFM may impose a fine or report the matter to the Public Prosecution Service.<sup>6</sup> The violation of the prohibition is

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<sup>1</sup> Besluit van 12 oktober 2006, houdende regels tot uitvoering van diverse bepalingen van hoofdstuk 5.4 van de Wet op het financieel toezicht (Besluit marktmisbruik Wft) [Decree of October 12, 2006 Containing Rules Implementing Various Provisions of Chapter 5.4 of the Act on Financial Supervision (Market Abuse (Financial Supervision Act) Decree), STAATSBLED VAN HET KONINKRIJK DER NEDERLANDEN [STB.] [OFFICIAL GAZETTE OF THE KINGDOM OF THE NETHERLANDS] 2006, No. 510, art. 21a, <http://wetten.overheid.nl/BWBR0020417/2014-01-01>, archived at <https://perma.cc/WMH9-VRYK>.

<sup>2</sup> *Id.* art. 21a, para. 2.

<sup>3</sup> *Id.* art. 21a, para. 1.

<sup>4</sup> *Id.* art. 21a, para. 3.

<sup>5</sup> *Frequently Asked Questions – Clustermunitions*, AFM, <https://www.afm.nl/en/professionals/veelgestelde-vragen/clustermunitie-investeringsverbod> (last visited Nov. 8, 2016), archived at <http://perma.cc/WWQ6-9W9Q>.

<sup>6</sup> Wet van 28 september 2006, houdende regels met betrekking tot de financiële markten en het toezicht daarop (Wet op het financieel toezicht) [Act of September 28, 2006 on Rules Regarding the Financial Markets and Their Supervision (Financial Supervision Act)], STB. 2006, No. 475, art. 1:80, <http://wetten.overheid.nl/BWBR0020368/2016-09-03>, archived at <http://perma.cc/37SL-4P3B>; Wet van 22 juni 1950, houdende vaststelling van regelen voor de opsporing, de vervolging en de berechting van economische delicten [Wet op de economische delicten]

categorized as a “category 2” violation, which carries a fine with a base amount of €500,000 (around US\$553,325) and a maximum of €1 million (around US\$1.11 million).<sup>7</sup> The base amount for category 2 and 3 fines is flexible and may be doubled or reduced to zero if the seriousness and duration of the offense and/or the degree of culpability of the offender give reason to do so.<sup>8</sup>

The AFM uses an indicative list of prohibited companies for its supervision. The list is updated towards the end of each calendar year. It is created at the request of the AFM by a representative selection of market parties and interest groups, which meet to agree on the list of companies that should be subject to the prohibition.<sup>9</sup> The original list of prohibited companies was published by the financial sector,<sup>10</sup> but updates have not been made publicly available by the AFM. The list included the following companies: Aeroteh (Romania), Alliant Techsystems (US), Aryt Industries (Israel), Ashot Ashkelon (Israel), Hanwha Corporation (South Korea), Kaman Corp. (US), Lockheed Martin Corp. (US), Norinco (China), Poongsan Corporation (South Korea), Singapore Technologies Engineering (Singapore), Splav State Research (Russia), and Textron (US).<sup>11</sup>

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[Economic Offenses Act], STB. 1950, No. 258, art. 1, <http://wetten.overheid.nl/BWBR0002063/2016-10-21>, archived at <http://perma.cc/6UPY-E2QN>.

<sup>7</sup> Besluit van 11 juni 2009, houdende regels voor het vaststellen van de op grond van de Wet op het financieel toezicht en enige andere wetten op te leggen bestuurlijke boetes (Besluit bestuurlijke boetes financiële sector) [Decree of June 11, 2009 on Rules for Determining Administrative Fines on the Basis of the Act on Financial Supervision and Other Laws (Decree on Administrative Fines in the Financial Sector)], STB. 2009, No. 329, art. 10, <http://wetten.overheid.nl/BWBR0026204/2016-07-14>, archived at <http://perma.cc/8F3F-37QP>; Financial Supervision Act art. 1:81, para. 2.

<sup>8</sup> Decree on Administrative Fines in the Financial Sector art. 2.

<sup>9</sup> AFM, *supra* note 5.

<sup>10</sup> *Nieuwsbrief* [Newsletter], EUMEDION, CORPORATE GOVERNANCE FORUM, Dec. 2012, at 4, [http://www.eumedion.nl/nl/public/kennisbank/nieuwsbrieven/2012/nieuwsbrief\\_2012-12.pdf](http://www.eumedion.nl/nl/public/kennisbank/nieuwsbrieven/2012/nieuwsbrief_2012-12.pdf), archived at <http://perma.cc/N3BN-ETWG>.

<sup>11</sup> *Id.*

# Spain

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## I. Introduction

Although Spain has been a producer and stockpiler of cluster munitions, it became a signatory of the Convention on Cluster Munitions on December 3, 2008, and ratified the Convention on June 17, 2009.<sup>1</sup> Spain is also a party to the Anti-Personnel Mine Ban Convention,<sup>2</sup> which it signed on December 3, 1997, and ratified on January 19, 1999.<sup>3</sup> Spain currently prohibits the use, stockpiling, production, transfer, and financing of such munitions.<sup>4</sup>

## II. Legislation

Law 33/1998, as amended by Law 27/2015, forbids the use, development, production, acquisition in any way, stockpiling, conservation, transfer, or export, directly or indirectly, of antipersonnel mines, cluster munitions, explosive bomblets, and weapons of similar effect. Furthermore, assisting, encouraging, or inducing anyone to participate in any activity prohibited by the Convention on Cluster Munitions or its implementing legislation is also banned.<sup>5</sup>

Law 27/2015 added a provision making illegal the financing and advertising of prohibited weapons and any of the activities prohibited by the Law.<sup>6</sup> The Law does not provide for

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<sup>1</sup> Convention on Cluster Munitions, Oct. 30, 2008, 2688 U.N.T.S. 39, available at <http://www.clusterconvention.org/files/2011/01/Convention-ENG.pdf>, archived at <https://perma.cc/5RU7-7CUN>; Status As At 27-09-17, *Convention on Cluster Munitions*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVI-6&chapter=26&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-6&chapter=26&lang=en), archived at <https://perma.cc/S4NF-KVGZ>.

<sup>2</sup> Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Sept. 18, 1997, 2056 U.N.T.S. 211, <https://treaties.un.org/doc/Publication/UNTS/Volume%202056/v2056.pdf>, archived at <https://perma.cc/75E5-HNT5>.

<sup>3</sup> *Treaties, States Parties and Commentaries, Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*, INT'L COMM. OF THE RED CROSS, [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp\\_viewStates=XPages\\_NORMStatesParties&xp\\_treatySelected=580](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=580), archived at <https://perma.cc/BZL8-X9UT>.

<sup>4</sup> *Spain (Archives: 1999–2014)*, LANDMINE AND CLUSTER MUNITION MONITOR, [http://archives.the-monitor.org/index.php/publications/display?act=submit&pqs\\_year=2009&pqs\\_type=cm&pqs\\_report=spain](http://archives.the-monitor.org/index.php/publications/display?act=submit&pqs_year=2009&pqs_type=cm&pqs_report=spain) (cluster munitions), archived at <https://perma.cc/PZW3-83FY>; [http://archives.the-monitor.org/index.php/cp/display/region\\_profiles/theme/3875](http://archives.the-monitor.org/index.php/cp/display/region_profiles/theme/3875) (mines), archived at <https://perma.cc/TXN6-EVNT>.

<sup>5</sup> Law 33/1998, Oct. 5, 1998, BOLETÍN OFICIAL DEL ESTADO [B.O.E.], Oct. 6, 1998, as amended by Ley 27/2015, July 28, 2015, on the Complete Prohibition of Antipersonnel Mines, Cluster Munitions and Similar Weapons art. 2.1, B.O.E., July 28, 2015, <http://www.boe.es/boe/dias/2015/07/29/pdfs/BOE-A-2015-8471.pdf>, archived at <https://perma.cc/4QET-JN6S>.

<sup>6</sup> *Id.*

specifics on what types of investments are prohibited, but rather provides for a prohibition in general terms.<sup>7</sup>

### III. Implementation

On July 11, 2008, the Spanish government ordered a unilateral moratorium on cluster munitions in the Spanish Armed Forces possession and the destruction of such munitions.<sup>8</sup> In addition, the Spanish government assumed the commitment to destroy cluster bombs in the Spanish government's possession by June 2009.<sup>9</sup> In compliance with the moratorium, Instalaza and Maxam, Spanish manufacturers of cluster bombs, cancelled their production when Spain signed the Convention on Cluster Munitions.<sup>10</sup> In addition, the agencies of the Spanish government responsible for foreign trade were instructed to deny all requests for the export of cluster munitions.<sup>11</sup>

According to an official report by the Ministry of Defense, by the end of 2008, Spain had destroyed 4,339 cluster munitions, which constituted over 77% of its stockpile, and completed the destruction of cluster munitions in March 2009.<sup>12</sup>

Spanish financial institutions, such as BBVA and Banco Santander, previously provided financing to Spanish companies manufacturing cluster munitions and anti-personnel mines, but stopped this practice when the prohibition under Law 27/2015 was enacted, according to declarations issued by the banks.<sup>13</sup>

The Law uses general language and does not provide specific names of the domestic or foreign companies affected by the prohibition.

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<sup>7</sup> *Id.*

<sup>8</sup> *El Gobierno Aprueba la Moratoria para Destruir las Bombas de Racimo en España*, PÚBLICO (July 11, 2008), <http://especiales.publico.es/hemeroteca/133770/el-gobierno-aprueba-la-moratoria-para-destruir-las-bombas-de-racimo-en-espana>, archived at <https://perma.cc/6NV2-5K8N>; Texto del Acuerdo por el que se Dispone una Moratoria Unilateral Relativa a las Municiones de Racimo y se Impulsa el Proceso de Firma y Ratificación de la Convención sobre Municiones de racimo Recientemente Aprobada en la Conferencia Diplomática de Dublín y su Aplicación Provisional [Text of the Accord that Approves a Unilateral Moratorium Related to Cluster Munitions and Boosts the Process of Signature and Ratification of the Convention on Cluster Munitions Recently Approved in the Diplomatic Dublin Conference and Its Provisional Application], approved July 11, 2008, Anexo 1, at 8, <http://archives.the-monitor.org/cm/2009/countries/pdf/Spain%20MFA%20Cluster%20Response%204.2009.pdf>, archived at <https://perma.cc/22AC-CPVF>.

<sup>9</sup> Press Release, Ministerio de Defensa, España Habrá Desactivado sus Bombas Racimo en Siete Meses (Dec. 2, 2008), [http://www.defensa.gob.es/gabinete/notasPrensa/2008/12/notaPrensa\\_11845.html](http://www.defensa.gob.es/gabinete/notasPrensa/2008/12/notaPrensa_11845.html), archived at <https://perma.cc/PFA9-UVQS>.

<sup>10</sup> LANDMINES AND CLUSTER MUNITION MONITOR, *supra* note 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* n.44.

<sup>13</sup> *BBVA y Santander invirtieron más de 4.000 millones de euros en armas entre 2011 y 2016* [BBVA and Santander Invested More than 4,000 Million Euros in Arms Between 2011 and 2016], BEZ (July 24, 2016), <http://www.bez.es/82793197/BBVA-y-Santander-invirtieron-mas-de-000-millones-de-euros-en-armas-entre-2011-y-2016.html>, archived at <https://perma.cc/SC6H-QTEP>.

#### IV. Enforcement

Violations of the prohibition on use, development, production, sale, and stockpiling of prohibited weapons are sanctioned according to the Penal Code<sup>14</sup> with five to ten years of imprisonment.<sup>15</sup> Participation or assistance with carrying out the forbidden activities are sanctioned with imprisonment for three to five years.<sup>16</sup> However, the Penal Code does not provide for specific criminal sanctions applicable to the financing or advertising of prohibited weapons.

The Ministry of Defense is involved in implementation of the Law but does not have specific oversight authority. The Ministry of Industry, Tourism and Commerce is authorized to take the necessary measures to implement the prohibition on importing, exporting, and introducing cluster munitions under the Convention, according to an agreement reached between the Ministries of Foreign Affairs; Defense; and Industry, Tourism and Commerce and submitted to the Acuerdo de Ministros of July 8, 2008.<sup>17</sup>

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<sup>14</sup> Ley Orgánica 10/1995, CÓDIGO PENAL [Organic Law 10/1995, PENAL CODE], Nov. 23, 1995, B.O.E., Nov. 24, 1995, <http://www.boe.es/buscar/act.php?id=BOE-A-1995-25444&tn=1&p=20150428&vd=#a563>, archived at <https://perma.cc/YWZ7-6YW9>.

<sup>15</sup> *Id.* art. 566.

<sup>16</sup> *Id.*

<sup>17</sup> LANDMINES AND CLUSTER MUNITION MONITOR, *supra* note 4.

# Switzerland

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## I. Legal Framework

In Switzerland, the prohibition of investment in “prohibited war materials” is codified in the War Material Act.<sup>1</sup> “War materials” are defined as weapons, weapons systems, munitions, and military explosives, as well as dual-use equipment.<sup>2</sup> The annex to the War Material Ordinance contains a list of materials designated as war materials by the Federal Council, the Swiss government.<sup>3</sup> “Prohibited war materials” are nuclear, biological, or chemical weapons, anti-personnel mines, and cluster munitions.<sup>4</sup>

The Act prohibits the direct financing of the development, manufacture, or acquisition of prohibited war material as well as the indirect financing if the indirect financing is used to circumvent the prohibition on direct financing.<sup>5</sup> “Direct financing” is defined as the “direct granting of credits, loans or gifts, or comparable financial advantages.”<sup>6</sup> The participation in companies that develop, manufacture, or acquire prohibited war material or the acquisition of debt securities or other investment products issued by such companies qualifies as “indirect financing.”<sup>7</sup> The prohibitions on direct and indirect financing are criminal law norms and therefore require intent to be fulfilled.<sup>8</sup> Only direct intent is relevant; merely accepting the possibility of violating the prohibitions on financing under articles 8b or 8c is not enough.<sup>9</sup>

Anyone who intentionally violates the prohibition of financing and cannot claim an exemption is liable to a custodial sentence not exceeding five years or to a monetary penalty.<sup>10</sup>

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<sup>1</sup> Bundesgesetz über das Kriegsmaterial (Kriegsmaterialgesetz, KMG) [War Material Act], Dec. 13, 1996, SYSTEMATISCHE RECHTSSAMMLUNG [SR] [SYSTEMATIC COLLECTION OF LAWS] 514.51, <https://www.admin.ch/opc/de/classified-compilation/19960753/201302010000/514.51.pdf>, archived at <http://perma.cc/2E49-3K33>, unofficial English translation available at <https://www.admin.ch/opc/en/classified-compilation/19960753/201302010000/514.51.pdf>, archived at <http://perma.cc/G49X-BDXT>.

<sup>2</sup> *Id.* art. 5, para. 1.

<sup>3</sup> Verordnung über das Kriegsmaterial (Kriegsmaterialverordnung, KMV) [War Material Ordinance], SR 514.511, <https://www.admin.ch/opc/de/classified-compilation/19980112/201510010000/514.511.pdf>, archived at <http://perma.cc/5H2J-2J57>, unofficial English translation available at <https://www.admin.ch/opc/en/classified-compilation/19980112/201510010000/514.511.pdf>, archived at <http://perma.cc/GMT2-A3TU>.

<sup>4</sup> War Materials Act arts. 7, 8, 8a.

<sup>5</sup> *Id.* arts. 8b, 8c.

<sup>6</sup> *Id.* art. 8b, para. 2.

<sup>7</sup> *Id.* art. 8c, para. 2.

<sup>8</sup> *Id.* art. 35b.

<sup>9</sup> *Id.* art. 35b, para. 3.

<sup>10</sup> *Id.* art. 35b, para. 1.

The law is overseen by the State Secretariat for Economic Affairs (Staatssekretariat für Wirtschaft, SECO), which forms part of the Federal Department of Economic Affairs, Education and Research.<sup>11</sup> No governmental lists could be located that provide for covered companies.

## II. Deterrent Effect of the Law

The prohibitions on direct and indirect financing entered into force on February 1, 2013.<sup>12</sup> The nongovernmental organization Business and Human Rights Conform (BHRC) stated in a 2015 report that investments by Swiss financial institutions in nuclear-weapon-producing companies have not declined since the amendment entered into force, but have actually increased.<sup>13</sup>

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<sup>11</sup> War Materials Ordinance art. 13.

<sup>12</sup> Bundesgesetz über das Kriegsmaterial (Kriegsmaterialgesetz, KMG). Änderung vom 16. März 2012 [War Materials Act. Amendment of March 16, 2012], AMTLICHE SAMMLUNG DES BUNDESRECHTS [AS] [OFFICIAL COMPILATION OF FEDERAL LAWS] 295, 299 (2013), No. III, <https://www.admin.ch/opc/de/official-compilation/2013/295.pdf>, archived at <http://perma.cc/67DW-AR6G>.

<sup>13</sup> BHRC, DAS SCHWEIZERISCHE FINANZIERUNGSVERBOT VON KERNWAFFEN IM KMG [THE SWISS PROHIBITION ON THE FINANCING OF NUCLEAR WEAPONS IN THE WAR MATERIAL ACT] 4 (Nov. 2015), [http://bhrc.ch/wp-content/uploads/2015/11/Publikation\\_BHRC\\_2015\\_final.pdf](http://bhrc.ch/wp-content/uploads/2015/11/Publikation_BHRC_2015_final.pdf), archived at <http://perma.cc/743D-49H8>.