



## **Brief Instruction concerning art. 8a OPSA**

***Requirement to declare an activity connected with war material pursuant to the WMA or with goods pursuant to the GCA.***

### **Background**

Goods exports often go hand in hand with certain services for armed or security forces. This concerns services in the field of **logistical support**, such as the servicing, maintenance or repair of the exported goods, but also **advising and training** given on the servicing, maintenance, repair, development, manufacture or use of a good, or advising and training that are generally provided in connection with export-controlled intellectual property (including the related expertise), and its associated rights in compliance with the WMA.

### **Rule of exception according to art. 8a OPSA**

- If a company exports war material pursuant to the WMA or goods pursuant to the GCA, and provides **servicing, maintenance or repair services** in close connection with this material or these goods, the provision of these services is not subject to the declaration requirement if the export would still be lawful when the activity is performed.
- If a company exports war material pursuant to the WMA or goods pursuant to the GCA, and provides **advising and training given on servicing, maintenance, repair, development, manufacture or use** in close connection with this material or these goods, the provision of these services is not subject to the declaration requirement if the export would still be lawful when the activity is performed.
- If a company transfers intellectual property (including the related expertise) and its associated rights in compliance with the WMA and provides **advising and training given on servicing, maintenance, repair, development, manufacture or use** in close connection with this good, the provision of these services is not subject to the declaration requirement, if the transfer would still be lawful when the activity is performed.

The **company submitting the application has an obligation** to check whether the **planned services are closely connected** with the goods to be exported. In the event of doubt, please contact the SECO, which in turn may contact the FDFA authority responsible for the application of the PSSA.

With regard to knowledge of whether the **export would still be lawful** when these activities are performed, it is worth highlighting a number of points. If there is a valid export permit, the provision of a service in connection with these activities as referred to in art. 8a is, in itself, lawful. If there is no valid export permit (because the good in question has already been exported from Switzerland, for example), or if the export does not require authorisation, **companies are responsible for checking** whether export would still be lawful at the time the service is provided, if necessary by **contacting SECO**. The date of provision is essentially determined by the date on which the activity begins. However, if an activity is ongoing for several years, there should be regular checks to determine whether or not the export of the goods in question is still lawful. This applies in particular if the situation has changed considerably.

**PLEASE NOTE:** art. 8a OPSA does not apply if the company is planning to perform an activity that constitutes operational support for armed or security forces in the sense of art. 1a, para. 1 OPSA. Operational support is defined as a service provided by private companies for armed or security forces in connection with their essential functions and in the context of ongoing or planned operations. In such a case, a declaration according to the PSSA is always compulsory.

To illustrate the process please consider the following diagram:

