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*Permanent Mission of the Republic of Estonia to the OSCE*

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## NOTE VERBALE

The Permanent Mission of the Republic of Estonia to the Organization for Security and Co-operation in Europe presents its compliments to the Missions/Delegations to the OSCE and to the Conflict Prevention Centre and has the honor to enclose the Information Exchange and the Questionnaire on Conventional Arms Transfers; the annual reports on information exchange on SALW exports and imports, and information on SALW Identified as Surplus and/or Seized and Destroyed during the 2019.

The Permanent Mission of the Republic of Estonia to the Organization for Security and Co-operation in Europe avails itself of this opportunity to renew to the Missions/Delegations to the OSCE and to the Conflict Prevention Centre the assurances of its highest consideration.

Vienna, September 22, 2020

Enclosures: Annex 3: Annual Information on SALW Export

Annex 3: Annual Information on SALW Imports

Annex 4: Annual Information on SALW Identified as Surplus and/or Seized and Destroyed



-All Missions/Delegations to the OSCE

-Conflict Prevention Centre

VIENNA

Questionnaire on Participating States' Policy and/or National Practices  
and Procedures for the Export of Conventional Arms and Related Technology

**Country:** ESTONIA  
**Year of Update:** 2019

OSCE participating States are requested to provide details of:

**1. Their basic principles, policies and/or national practices on the export of conventional arms and related technology.**

Estonian Governmental Commission's (Strategic Goods Commission) decisions regarding the export of military goods are made in accordance with the provisions of the Strategic Goods Act (Jan. 1, 2012) as well as the EU Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, and such arrangements as may be agreed subsequently. As a States Party to Arms Trade Treaty, Estonia also follows the relevant control principles set out in the Treaty. Strategic Goods Act stipulates the following:

1. The Strategic Goods Commission shall refuse to issue a licence, if:
  - (1) The goods are subject to the following prohibitions:
    - a. the export and transit of strategic goods and the provision of service to a subject of International sanctions;
    - b. the diversion from their intended destination of goods subject to the national supervision over the import and end-use of strategic goods without the written consent of the Strategic Goods Commission and the re-export of such goods without special authorisation;
    - c. the transfer of weapons of mass destruction, of any materials, hardware, software and technology used for the production thereof and the related services regardless of their country of destination excluding when it is absolutely necessary for the purpose of training of the demolition thereof;
    - d. the transfer of antipersonnel mines and the related services, except in the case when it is absolutely necessary for the purpose of training or the demolition thereof;
    - e. the transfer of goods used for human rights violations and the related service regardless of the country of destination unless the good are used for public exhibition in a museum due to their historical significance;
    - f. the transfer and service of other strategic goods that is prohibited by a treaty.
  - (2) the transfer of strategic goods or the provision of service endangers the interests or security of Estonia or an ally of Estonia;
  - (3) there is reason to believe that the strategic goods may be used to commit human rights violations in the country of destination;
  - (4) there is reason to believe that the strategic goods may be used for violations of international humanitarian law;
  - (5) there is reason to believe that the strategic goods may be used to endanger national, regional or international security, including acts of terrorism;

- (6) there is reason to believe that, in the country of destination, the strategic goods may be diverted from their original destination of re-exported under conditions endangering security;
  - (7) the transfer of strategic goods or the provision of services is in conflict with the international obligations of Estonia;
  - (8) false information or falsified documents were knowingly submitted upon applying for the licence.
2. The Commission may refuse to issue a licence, if:
- (1) an applicant or a related person has violated legislation relating to the transfer of strategic goods or the provision of services or has not complied with the precepts issued on the basis thereof within five years before the decision to issue the licence;
  - (2) an applicant or a related person has violated an international sanction within five years before the decision to issue the licence;
  - (3) misdemeanour proceedings have commenced concerning the applicant or a related person regarding strategic goods, the transfer of strategic goods or the provision of service;
  - (4) the transfer of strategic goods or the provision of service may endanger the interests or security of the country of destination;
  - (5) strategic goods are going to be transferred or services provided to a region where there is an armed conflict or danger of an armed conflict;
  - (6) there is reason to believe that the strategic goods exported from Estonia or produced in the country of destination using the know-how or technology exported from Estonia may be re-exported from the country of destination under conditions endangering international security as well as be diverted from their original destination in the country of destination or during the transfer to the country of destination;
  - (7) the end-user and the end-use of strategic goods or services in the country of destination are not known or the end-user refuses to submit the end-use control documents to the commission or submits incomplete end-use control documents;
  - (8) other good reasons exist.

Estonian national practices on the export of conventional arms and related technology fully comply with the principles stated above.

**2. Their national legislation governing the export of conventional arms and related technology. If applicable, report changes and/or updates to the data provided in 1995, including any relevant subsidiary legislation.**

Strategic Goods Act passed on 22 December 2011 and entered into force January 1<sup>st</sup>, 2012.

Secondary legislation:

- (1) Government ordinance no 162 – concerning Formation of the Commission of Strategic Goods and its rules of procedures from January 1<sup>st</sup>m 2012;
- (2) Government ordinance no 163 – Procedure for Customs Formalities relating to Strategic Goods and for Transfer of Strategic Goods within the European Community and Transfer of Firearms Through Air Transport from January 1<sup>st</sup>, 2012;
- (3) Government ordinance no 171 – List of Strategic Goods from June 30, 2012 (last update July 5<sup>th</sup>, 2019);
- (4) Government order no 555 Establishing of the National General Authorisations, from January 1<sup>st</sup>, 2012;

- (5) Foreign Minister's ordinance no 6 - Establishes all the applications and licences forms that are related to Strategic Goods Act, from January 1<sup>st</sup>, 2012;
- (6) Foreign Minister's ordinance no 7 – Establishment of the database for all the strategic goods related activities, from January 1<sup>st</sup>, 2012.

**3. Any international agreements or guidelines, other than OSCE commitments, covering the export of conventional arms to which they are a party.**

Estonia follows the criteria and principles of the EU Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, the UN Register of Conventional Arms Transfers and Wassenaar Arrangement guidelines and principles. As a State Party of Arms Trade Treaty (ATT) Estonia fully follows the principles of the Treaty.

**4. The procedures for processing an application to export conventional arms and related technology:**

- who is the issuing authority?
- what other authorities are involved and what is their function?
- who deals with compliance?

An inter-ministerial Strategic Goods Commission has been set up by the Government. Commission is chaired by the Minister of Foreign Affairs, and includes also the representatives of the Ministry of Defence, Ministry of Economic Affairs and Communication, Tax and Customs Board, Police and Border Guard Board and Internal Security Service (formerly named as Security Police Board). The Commission is responsible authority for licensing of military and dual-use goods.

The primary responsibility for compliance matters lies within the Tax and Customs Board and Internal Security Service. The latter is dealing with enforcement, investigation of the violations and industry audits.

**5. Lists of conventional weaponry under national export controls and the basis for their control. If applicable, report changes and/or updates to the data provided in 1995.**

In terms of control lists of conventional arms, Estonia follows the practices of Wassenaar Arrangement and EU. Present national control lists of Estonia may be seen as the Web site of the MFA ([http://www.riigiteataja.ee/aktilisa/1030/6201/5004/VV\\_171m\\_lisa1.pdf#](http://www.riigiteataja.ee/aktilisa/1030/6201/5004/VV_171m_lisa1.pdf#)). The last updates to the list of Strategic Goods are in force from July 5<sup>th</sup>, 2019.

**6. Principles and national regulations on the destination or end-user of the equipment. Is there a complete *erga omnes* system or a published list of**

- destinations of concern?
- embargoed countries?
- differentiation between destinations (e.g., is there any preferential treatment of (groups of) countries)?

Estonia does not maintain a specific 'black list' of countries, but licences are not issued for transactions with countries under current embargoes and sanctions of the UN Security Council, the Council of European Union and OSCE. The list of embargoed countries is publicly available

at the website of MFA. There is no differentiation between destinations. All licencing decisions are made on a case by case basis taking into account criteria mentioned in answer to question 1 (see above). During it's EU chairmanship in 2017, Estonia developed and provided the EU and broader public the combined EU & UN roadmap on sanctions, [www.sanctionsmap.eu](http://www.sanctionsmap.eu). It is in active use and gaining in popularity.

**7. Requirements for the provision of an end-user certificate in an export license application, or of non-re-exportation clauses, or of any other type of certification before and after delivery for conventional arms export contracts. If applicable, please specify any verification of the end-user certificate and/or non-re-exportation clauses before and after delivery.**

Strategic Goods Commission requires End User Certificate or similar document that contains non-re-export clauses on every export transaction. If risk of diversion exists, the Commission may also require Delivery Verification Certificate.

**8. National definition of transit and transshipment (including free zones) of conventional arms, together with associated national legislation and compliance procedures.**

Strategic Goods Act covers also transit through Estonia. '*Transit*' has been defined as follows:

- 1) the carriage of military goods through Estonia;
- 2) the passage of defence-related products through Estonia pursuant to Directive 2009/43/EC of the European Parliament and of the Council.

Transit control principles are very similar with export control principles.

**9. The procedures governing companies wishing to export arms. Are companies obliged to seek official governmental authority to enter into contract negotiations or to sign contracts with foreign customers?**

Companies do not need permission to enter into contact negotiations or sign contracts of the goods are located in Estonia and as long as such activity itself does not involve transfer of controlled technology. However, consulting with the Commission before initiating the negotiations is encouraged.

**10. Policy on the revocation of export licences once they have been approved; please list any published regulations.**

The Strategic Goods Act states that Strategic Goods Commission has three possibilities after the licence has been approved - revocation, suspension of validity and annulment of the licence.

The commission shall decide on revocation of the licence in the following cases:

- 1) the holder of the licence submits a corresponding request in writing;
- 2) the information specified in the licence changes significantly;
- 3) the holder of the licence fails to comply with the conditions of the licence;
- 4) the holder of the licence fails to comply with the legislation relating to strategic goods or the precepts made on the basis thereof;
- 5) the licence issued is destroyed;
- 6) the holder of the licence who is a legal person is dissolved or the holder of the licence who is a natural person dies.

The commission shall decide on suspension of the validity of the licence in the following cases:

- 1) the holder of the licence submits a corresponding request in writing;
- 2) the holder of the licence fails to comply with the conditions of the licence;
- 3) the holder of the licence fails to comply with the legislation relating to strategic goods or the precepts made on the basis thereof;
- 4) the licence issued is lost.

The commission shall decide on annulment of the licence in the following cases:

- 1) during the inspection it becomes evident that the applicant for licence has knowingly submitted false information;
- 2) new facts become evident which, had they been known or existed at the time of reviewing the application for a licence, would have resulted in a refusal to issue a licence.

In the case of significant changes in the information in the licence, the commission shall issue a new licence containing amended information on the basis of a written request and new documents submitted by the applicant.

A member state of the European Union may apply for revocation, suspension or annulment of the licence if the transfer may endanger essential security interests of the member state. In this case the commission shall make the decision after having consulted the parties.

If a licence is destroyed or lost, the commission shall issue a new licence concerning the quantity of goods not yet supplied on the basis of a written request submitted by the applicant and the documents submitted upon application for the licence which is destroyed or lost.

The commission notifies immediately the Tax and Customs Board of the revocation or suspension of validity of a licence. The commission shall notify the Security Police Boards of the revocation or suspension of validity of a licence issued for the provision of services.

**11. The penal and administrative implications for any exporter failing to comply with national controls. If applicable, report changes and/or updates to the data provided in 1995.**

There are new provisions in the Estonian Penal Code in force since January 1<sup>st</sup> 2015 addressing offences relating to strategic goods (includes SALW).

§421<sup>1</sup> addresses illegal carriage of strategic goods or illegal provision of services relating to strategic goods, as follows:

- (1) Carriage of strategic goods or provision of services relating to strategic goods without a required valid special authorisation, the rights to use them, certification or registration thereof, and trafficking of strategic goods to persons not indicated or end-use not indicated in the special authorisation is punishable by a pecuniary punishment or up to five years' imprisonment.
- (2) The same act:
  - 1) by a group; or
  - 2) if committed at least twice,is punishable by two to ten years' imprisonment.

- (3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.
- (4) A court may, pursuant to the provisions of §83 of the Penal Code, apply confiscation of a substance or object which was the direct object of the commission of an offence provided for in this section.
- (5) For the criminal offence provided for in this section, the court shall impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of §83<sup>2</sup> of the Penal Code.

§ 421<sup>2</sup> covers carriage of prohibited strategic goods or provision of services relating to prohibited strategic goods, as follows:

- (1) Carriage of prohibited strategic goods or provision of services relating to prohibited strategic goods is punishable by three to twelve years' imprisonment.
- (2) The same act:
  - 1) by a group: or
  - 2) if committed at least twice,is punishable by five to twenty years' imprisonment.
- (3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.
- (4) A court shall confiscate a substance or object which was the direct object of commission of any offences provided for in this section pursuant to the provisions of § 83 of the Penal Code.
- (5) For the criminal offence provided for in this section, the court shall impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of §83<sup>2</sup> of the Penal Code.

§93-95 of Strategic Goods Act stipulate that a violation of the notification obligation and non-compliance with obligation of preservation of documents and reporting is punishable by a fine of up to 100 fine units (currently € 400.00). The same act, if committed by a legal person, is punishable by a fine of up to € 640.00.

## **12. Any circumstances in which the export of arms does not require an export licence.**

A licence need to be applied for in cases where Estonia has entered into an agreement with an international organisation or the country of consignment or destination of the goods for the organisation of the export or transit of military goods or the provision of services.

In the case of services related to military goods, service providers who operate within the framework of a military or civilian mission pursuant to a decision of the Ministry of Defence, the Rescue Board, the Police and Boarder Guard Board, the Internal Security Service shall be exempt from the obligation to apply for a licence.

The Strategic Goods Commission may exempt from the obligation to apply for a licence for European Union intra-Community transfer of defence-related products if:

- 1) the supplier or the recipient is a governmental body or part of the armed forces of a member state of the European Union;
- 2) the supplies are made by the European Union, the North Atlantic Treaty Organisation, the International Atomic Energy Agency, the United Nations or the Organization for Security and Co-operation in Europe for the performance of their tasks;

- 3) the transfer is linked to the humanitarian aid in the case of a disaster or as a donation in an emergency;
- 4) 4) the transfer is necessary for repair or maintenance of the defence-related products supplied pursuant to clause 1)-3) of this subsection.

In order to obtain the exemption from licence specified in subsection of this section a holder and an owner of the goods or a declarant shall submit a written application and the relevant documents to the commission at least ten working days before the estimated time of the commencement of the transfer. The commission shall decide on the licence exemption within five working days as of the receipt of the application and shall notify of the decision in writing.

### **13. Licences for temporary export (e.g., demonstrations or testing), the period allowed and any special conditions attached to the licence, including verification of return procedures.**

Licences for temporary export are issued for repair, demonstration and exhibition purposes. The maximum period allocated for transaction is one year. The application process and criterion for issuing the licence are the same as for permanent exports. A standard condition for a temporary licence is that return of the exported goods shall be documented by the Customs services.

### **14. Licence documents and any standard conditions attached to it (copies to be provided).**

In any standard case, export licence is issued in three similar water marked forms. One form of the licence is filed with the commission; one form stamped by Customs needs to be returned to the Commission after goods have been exported and applicant keeps one copy of the license.

### **15. Different types (e.g. individual, general, restricted, full, permanent, etc.) of licences and what they are used for.**

According to Estonian export control legislation three types of licences are available:

- 1) An individual licence is a document which grants the person specified in the document the right to import military goods and defence-related products into Estonia or export strategic goods from Estonia and provide a service to a single consumer and a single country or place of destination pursuant to the conditions set out in the licence;
- 2) A global licence which grants the person specified in the document the right to import military goods and defence-related products into Estonia from one or several countries or places of consignment and from one or several suppliers or to export strategic goods from Estonia to one or several countries or places of destination and to one or several consumers pursuant to the conditions set out in the licence;
- 3) On the basis of the general authorisation the transfer of the strategic goods and provision of service is implemented in a simplified procedure pursuant to the conditions and in relation to the goods and countries determined therein. General authorization is the National General Authorisation.

Estonia has issued 4 national general authorisations that are valid for intra-EU defence related transfers:

1. to the armed forces of a European Union Member State;
2. recipient is a certified company;



3. transfer is made for the purposes of demonstration, evaluation or exhibition;
4. transfer is made for the purposes of maintenance and repair.

Government order no 555 Establishing of the National General Authorisations, from January 1<sup>st</sup>, 2012 sets the conditions and requirements for national general authorisations.

**16. Advice given to exporters as to licensability, such as the likelihood of approval for a possible transaction.**

Upon request, the Commission will advise the exporters whether a licence for a certain good to specific recipient is likely to be authorised. However, the statement by the Commission at the time of receipt of the application always includes a reservation that changes in political circumstances may result in the Commission not authorising a licence, etc.. Advice provided to exporters at the time of submission and processing of the licence application is not binding for the Commission.

**17. The average number of export licences issued annually and the staff engaged in the export licensing procedure.**

Number of licences issued for export of military items has stabilized in the past few years. In 2015 the number was 97, in 2017 91, in 2018 82 and 74 in 2019. Intergovernmental Commission processing licence applications and issuing licences consists of 12 officials and a secretary. In addition, the Commission may involve external experts in its work, if required.

**18. Any other relevant information pertaining to the export of conventional arms and related technology, e.g., additional laws, reports to Parliament, special procedures for certain goods.**

The Commission reports on its activities to the Government annually. Occasionally, the Chairman of the Commission reports on the activities of the Strategic Goods Commission to the Foreign Relations and Defence Committees of the Estonian Parliament (Riigikogu).

**19. Are all guidelines governing conventional arms transfers nationally published?**

All guidelines are published on the website of the Ministry of Foreign Affairs, available both in Estonian and English (EN version: <http://vm.ee/en/strategic-export-control>).