



PERMANENT DELEGATION OF NORWAY
TO THE OSCE

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The Permanent Delegation of Norway to the Organization for Security and Co-operation in Europe presents its compliments to all Permanent Delegations and Missions to the OSCE and to the Conflict Prevention Centre and, in accordance with Decision 20/95 of the Forum for Security Co-operation, has the honour to transmit the Norwegian Answer to the Questionnaire on Participating States' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology.

The Permanent Delegation of Norway to the Organization for Security and Co-operation in Europe avails itself of this opportunity to renew to all Permanent Delegations and Missions to the OSCE and to the Conflict Prevention Centre the assurances of its highest consideration. *Attk*

Vienna 30 June 2022



All Permanent Delegations and Missions to the Organization for Security and Co-operation in Europe
The Conflict prevention Center
V i e n n a

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Questionnaire on Participating States' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology FSC Decision No. 20/95

Norway

Norway bases her export controls on a seamless legislation encompassing military equipment and dual-use goods with catch-all provisions and including ATT provisions, the eight EU criteria and UN sanctions. Two control lists are maintained based on decisions in International Export Control Regimes, in the English language, as compiled by the European Union. The Norwegian legislation contains a Strategic Goods Act, a corresponding Regulation as well as public Guidelines for assessing applications for export control licenses.

The Export Control Law's §§1 and 2 and the Export Control Regulation's §§ 2 and 8.e were amended in July 2021 and reflected in Norway's 2021 questionnaire. The Guidelines were last updated in 2019. Please find their translations below in respective Annexes.

In January 2022 the two control lists which are Appendixes to the Regulation were updated.

Furthermore, the Government publishes an annual white paper, reporting to Parliament (Stortinget)¹ on exports of military goods and dual-use items for military use. This white paper gives a thorough account of the Government's export control policy, the legislation and the guidelines, as well as statistics.

A summary will be made available in English later this year. Link to last years report is given².

¹ 2021 whitepaper in Norwegian: [Meld. St. 14 \(2021–2022\) - regjeringen.no](https://www.regjeringen.no)

² The 2021 whitepaper in English: [Meld. St. 35 \(2020–2021\) Norwegian exports of defencerelated products in 2020, export control and international non-proliferation cooperation - regjeringen.no](https://www.regjeringen.no)

Annex 1

Act of 18 December 1987 relating to control of the export of strategic goods, services, technology, etc.

§ 1

The King may decide that goods and technology which may be of significance for other countries' development, production or utilization of products for military use or which may directly serve to develop the military capability of a country, including goods and technology that can be used to carry out terrorist acts, cf. the Penal Code, section 147a, first paragraph, shall not be exported from **Norway** without special permission. A prohibition may also be laid down against rendering services as mentioned in the first sentence without special permission. Conditions may be laid down for such permission.

The King may also prohibit persons who are resident or staying in Norway and Norwegian companies, foundations and associations from trading in, negotiating or otherwise assisting in the sale of weapons or military materiel from one foreign country to another without special permission. The same applies to strategic goods and technology as further specified in regulations. The King will issue further regulations to supplement and implement this Act.

§ 2

Every person has a duty to provide the Ministry with any assistance or information required in order to ensure compliance with the provisions of this Act or any regulations issued pursuant thereto.

For this purpose the Ministry may conduct inspections and require access to recorded accounting information, accounting records, business documents and other documents that may be of importance. The Ministry may conduct inspections itself, or appoint experts to do so. In connection with such inspections the Ministry shall be given access to office or company premises and shall be provided with the necessary assistance and guidance. Appeals pursuant to sections 14 and 15 of the Public Administration Act do not have suspensive effect unless so decided by the subordinate instance or the appeals instance.

The duties set out in the first and second paragraphs apply notwithstanding any statutory duty of secrecy.

Subject to the exceptions that follow from the above provisions, every person has a duty of secrecy as regards information obtained under this Act. However, the duty of secrecy shall not prevent:

1. information from being used to achieve the purpose for which it was provided or obtained, for example in connection with the preparation of a case, a decision, the implementation of a decision, follow up or control,
2. the information from being accessible to other public officials within the agency or service to the extent that this is necessary to establish suitable work routines and archive systems, for instance for use as guidelines in other cases,
3. the administrative agency from furnishing other administrative agencies with information concerning an enterprise's relationship to the agency and concerning decisions made when this is necessary to further the duties under this Act of the agency furnishing the information,
4. the administrative agency from reporting or providing information concerning breaches of the law to the prosecuting authority or to the supervisory authorities concerned if this is considered desirable in the public interest or if prosecuting the offence comes within the normal scope of the duties of the agency furnishing the information

5. the administrative agency from exchanging information (coordination) with another administrative agency as required by the Act relating to the reporting obligations of enterprises.

The Ministry may furthermore decide that public agencies in charge of tax assessment and control of value added tax shall be allowed access to information provided in accordance with this Act.

Sections 13 to 13e of the Public Administration Act do not apply.

§ 3

The Ministry may apply for the seizure of accounting records etc, such as mentioned in section 2, second paragraph. If there is reason to believe that such records exist, and if circumstances otherwise so indicate, the Ministry may apply for a search of offices and all other premises which are not a private residence.

An application for a search or seizure shall be addressed to the police. As regards further consideration of the application, the provisions of the Criminal Procedure Act apply insofar as they are appropriate. The person whom the application concerns shall have the rights of a party to the case in accordance with the provisions of the Criminal Procedure Act and, insofar as it is necessary for his activities, shall have access to the material seized. Nevertheless, this does not mean that he is to be regarded as charged with a criminal act. Section 204 of the Criminal Procedure Act applies correspondingly. Notwithstanding section 212, first paragraph, of the Criminal Procedure Act, the court will determine which documents etc. it is to examine.

§ 4

If the Ministry applies for search or seizure for the purpose of obtaining information on a matter with which the person concerned has been charged or for which he has been indicted, the application shall be dealt with as a separate matter in accordance with the provisions of section 3, second paragraph. The same applies if the Ministry applies to see documents etc. that are in the possession of the court or the prosecuting authority without a decision having been made as to whether they may be used in a criminal case. If the Court upholds the Ministry's application, it may lay down as a condition that the information not be used in connection with the investigation of the criminal case until a final decision has been made as to whether the prosecuting authority may make use of it in the said case. If the prosecuting authority's application is not upheld, the Ministry may not hand over the information or the documents to the prosecuting authority unless this is lawful under the provisions that otherwise apply to their duty of secrecy in respect of criminal acts.

§ 5

Unless the matter is subject to more severe penal provisions, any person who wilfully;

1. exports or attempts to export goods, technology or services in contravention of this Act or regulations issued pursuant thereto, or
2. contravenes or attempts to contravene any condition laid down pursuant to this Act, or
3. orally or in writing furnishes incorrect information concerning circumstances of significance for authorisation to export goods, technology or services if this information is furnished:
 - a. in a declaration made for use by a public authority or anyone acting on behalf of a public authority in connection with export or an application for permission to export,

b. in a declaration intended to enable another person to make such a declaration as is mentioned under litra a, or
4. in any other way contravenes or attempts to contravene provisions issued pursuant to this Act, is liable to fines or a term of imprisonment not exceeding five years, or both. Complicity in any offence such as is mentioned in the first paragraph is subject to the same penalty. Any negligent contravention of the matters mentioned in the first paragraph, or complicity in such contravention, is punishable by fines or a term of imprisonment not exceeding two years.

§ 6

Repealed by Act 20. July 1991 nr. 66

§ 7

If an enterprise or person does not comply with the duty to provide information set out in section 2, the Ministry may order the payment of a continuous daily fine until this duty has been fulfilled.

The amount of the coercive fine to be paid is set taking into account how important it is to ensure compliance with the order.

An order to pay a coercive fine is enforced by execution proceedings.

The King will issue further regulations on imposing, calculating and remitting coercive fines.

§ 8

The Act enters into force immediately. The regulations relating to control of strategic exports issued pursuant to Provisional Act of 13 December 1946 No. 30 relating to Export Control, apply until further notice.

The Act is not applicable to permission granted prior to its entry into force. Services rendered and transfers of technology etc. effected after the entry into force of the Act nevertheless require permission in accordance with this Act even if they are related to permission which has previously been granted.

Annex 2

Regulations relating to the export of defence-related products, dual-use items, technology and services

Implementing legislation: Laid down by the Ministry of Foreign Affairs on 19 June 2013 under section 1 of the Act of 18 December 1987 relating to control of the export of strategic goods, services, technology, etc., cf. Royal Decree of 18 December 1987 No. 967.

EEA references: EEA Agreement, Annex II, Chapter XIX, point 3q (Directive 2009/43/EC).

Chapter 1 Introductory provisions

Section 1 Scope of the regulations

These regulations apply to the export of specific products, technology, including intangible transfers of technology, technical data and production rights for products, and certain services.

Special provisions apply to the export of specific products, technology and services from a supplier in one EEA state to a recipient in another EEA state where explicitly set out in these regulations.

Section 2 Definitions

- (1) "Defence-related product" means any product listed at any given time in List I, which constitutes Annex I to these regulations.
- (2) "Dual-use item" means any product listed at any given time in List II, which constitutes Annex II to these regulations.
- (3) "Export" means any export from **Norway** of products, services or technology covered by these regulations.
- (4) "Transfer" means any export of defence-related products from a supplier or a customs warehouse in one EEA state to a recipient in another EEA state.
- (5) "Supplier" means the legal or natural person who is legally responsible for the export of products, technology or services under these regulations.
- (6) "Recipient" means the legal or natural person who is legally responsible for the receipt of products, technology or services exported under these regulations.
- (7) "Export licence" means authorisation from the Ministry of Foreign Affairs to export specific products, technology or services to a legal or natural person.
- (8) "Transfer licence" means authorisation by a national authority in an EEA state for suppliers to transfer defence-related products to a recipient in another EEA state.
- (9) "Transit" means the transport of products through Norway, if both sender and recipient are located outside Norway.

Chapter 2 Licencing

Section 3 Licensing requirement

An export licence from the Ministry of Foreign Affairs is required for the export of certain products, specific technology, including intangible transfers of technology, technical data and production rights for products, and certain services, unless otherwise specified in these regulations. In cases of doubt, the Ministry will decide whether or not the products, technology or services are subject to the licensing requirement. The licensing requirement also applies to the export of products from customs warehouses.

Section 4 Licensing requirement for controlled products

An export licence from the Ministry of Foreign Affairs is required for the export of products and related technology included in List I and List II, which constitute Annex I and Annex II to these regulations. As regards List I, the licensing requirement also applies to products designed or modified for military use, regardless of their current condition.

Section 5 Licensing requirement for services

An export licence from the Ministry of Foreign Affairs is required for services related to products and technology included in List I and List II and other services that may serve to develop the military capability of a country, and that are provided abroad or in Norway for use abroad.

Section 6 Licensing requirement for trade and brokering

An export licence from the Ministry of Foreign Affairs is required to trade in, offer brokering services or otherwise assist in the sale of products and technology that are included in List I from one foreign country to another. Corresponding provisions apply in connection with brokering services for products included on List II, and for related technology and services if it is known or there is reason to believe that such products, technology or service are or may be intended, in their entirety or in part, for use in connection with the development, production, maintenance, storage, detection, identification or proliferation of nuclear, chemical or biological weapons or other Nuclear explosive devices, and in connection with the development, production, maintenance or storage of missiles that can deliver such weapons.

Section 7 Licensing requirement for other products, technology and services

In addition to the products included in List I and List II, the export of the following products, technology and services is subject to the licensing requirement:

- a) any products, technology or services in cases where the exporter knows that or has reason to believe that such products, technology or services are or may be intended, in their entirety or in part, for use in connection with the development, production, maintenance, storage, detection, identification or proliferation of nuclear, chemical or biological weapons or other nuclear explosive devices. Corresponding provisions apply to the export of any products, technology or services that can be used in connection with the development, production, maintenance or storage of missiles that can deliver such weapons;
- b) any products, technology or services for military use to areas that are subject to an arms embargo imposed by the UN Security Council under Chapter VII of the UN Charter or other restrictive measures that Norway has aligned itself with;
- c) any products, technology or services for military use to areas where there is a war or the threat of war, or to countries where there is a civil war;

d) any products, technology or services that may directly serve to develop the military capability of a state in a way that is incompatible with key Norwegian security and defence interests.

Section 8 Exemptions from the licensing requirement

The following are exempted from the licensing requirement in section 3, cf. sections 4–7:

- a) products included in List II that are returned to a foreign owner after temporary import to Norway for exhibition or demonstration;
- b) rescue equipment and oil spill response equipment exported in connection with rescue operations;
- c) firearms, weapon parts and ammunition that are exported in accordance with the Act relating to firearms and ammunition, cf. the fifth part of the Regulations of 25 June 2009 No. 904 relating to firearms, weapons parts and ammunition;
- d) products exported to the European Space Agency (ESA), or its representative, and that are strictly necessary for the official activities of the organisation. The exception applies only to deliveries to member states of ESA;
- e) products included in List II that are solely destined for passage (transit) through Norway, if both sender and recipient are located outside Norwegian customs territory. The same applies to products included in List I if both sender and recipient are within the EEA;
- f) products, services and technology for use on the Norwegian continental shelf;
- g) products, services and technology for use on board Norwegian-owned ships sailing under the Norwegian flag or Norwegian-owned aircraft engaged in international trade;
- h) defence-related products and dual-use items that are owned by or at the disposal of Norwegian defence or police authorities, provided that the products or items are to be used by Norwegian forces abroad. This exemption also applies to products and items that form part of logistical support in multinational operations agreed by the said authorities, or that are sent out of the country for repair, maintenance, updating, and so on, and are to be returned to Norway. The defence and police authorities shall by 15 February each year send a report to the Ministry of Foreign Affairs on all exports of defence-related products such as are mentioned above that took place in the previous calendar year;
- i) defence-related products and dual-use items owned by or at the disposal of a defence or police authority in a NATO or an EEA state and that are stored in Norway or being returned abroad after temporary import to Norway in connection with a mission, an exercise or training.

Chapter 3 Export of defence-related products to recipients in the EEA

Section 9 Transfer licences

Transfers of defence-related products to recipients in the EEA may only take place on the basis of a general transfer licence, a global transfer licence or an individual transfer licence issued by the Ministry of Foreign Affairs. The rules regarding transfer licences apply only to defence-related products included in List I, which constitutes Annex I to these regulations.

Section 10 General transfer licences

General transfer licences for defence-related products are published by the Ministry of Foreign Affairs. The licences may be used by suppliers in Norway following registration with the Ministry of Foreign Affairs. General transfer licences apply to specified categories of products, to a category or categories of recipients in the EEA

and special conditions may be attached to the licences.

General transfer licences may be used where:

- a) the recipient is part of the armed forces of an EEA state or a contracting authority in the field of defence, purchasing for the exclusive use of the armed forces of an EEA state, or;
- b) the recipient is an undertaking certified in accordance with section 13, or;
- c) the transfer is made for the purposes of demonstration, evaluation or exhibition, or;
- d) the transfer is made for the purposes of maintenance and repair, if the recipient is the originating supplier of the defence-related products. Such licences may in cases c) and d) also be used for the return from Norway of defence-related products received under a corresponding licence issued by another EEA state.

Section 11 Global transfer licences

In the case of transfers of defence-related products that are not covered by a general transfer licence, the Ministry of Foreign Affairs, may, at the written request of a supplier in Norway, issue a global transfer licence. These licences are granted for a period of three years, with the possibility of renewal. Global transfer licences apply to specified defence-related products or categories of products, and to specified recipients or categories of recipients in one or more EEA states. Special conditions may be attached to the licences.

Section 12 Individual transfer licences

In the case of transfers of defence-related products that are not covered by a general transfer licence and where a global transfer licence cannot be granted, the Ministry of Foreign Affairs, may, at the written request of a supplier in Norway, issue an individual transfer licence. Such licences apply to the transfer of a specified quantity of specified defence-related products to a recipient in an EEA state in one or several shipments.

An individual transfer licence shall be used where:

- a) the request for a transfer licence is limited to one transfer;
- b) it is necessary in order to safeguard Norway's fundamental security interests, or for reasons of public order;
- c) it is necessary in order to fulfil Norway's international obligations; or
- d) there are strong grounds for believing that the supplier will not be able to fulfil the conditions needed to acquire a global transfer licence.

Chapter 4 Certification of Norwegian undertakings as recipients in the EEA

Section 13 Certification of undertakings in Norway

The Ministry of Foreign Affairs may, upon written request, certify undertakings established in Norway for receipt of defence-related products under general transfer licences published by other EEA states.

In carrying out this certification, the Ministry of Foreign Affairs shall assess the reliability of the recipient undertaking, in particular as regards its capacity to observe export limitations for defence-related products received under a general transfer licence from another EEA state. In this assessment, particular importance will be attached to the following criteria:

- a) proven experience in defence activities, taking into account in particular the undertaking's record of compliance with export restrictions, any court decisions on this matter, any

authorisation to produce or commercialise defence-related products and the employment of experienced management staff;

b) relevant industrial activity in defence-related products in the EEA, in particular capacity for system/sub-system integration;

c) the appointment of a senior executive as the dedicated officer personally responsible for transfers and exports;

d) a written commitment by the undertaking, signed by the senior executive referred to in point (c), that the undertaking will take all necessary steps to observe and enforce all specific conditions related to the end-use and export of any specific component or product received;

e) a written commitment by the undertaking, signed by the senior executive referred to in point (c), to provide, with due diligence, detailed information in response to requests and inquiries from the Ministry of Foreign Affairs concerning the end-users or end-use of all products exported, transferred or received under a transfer licence from another EEA state; and

f) a description, countersigned by the senior executive referred to in point (c), of the internal compliance programme or transfer and export management system implemented in the undertaking. This description shall provide details of the organisational, human and technical resources allocated to the management of transfers and exports, the chain of responsibility within the undertaking, internal audit procedures, awareness-raising and staff training, physical and technical security arrangements, record-keeping and traceability of transfers and exports.

Section 14 Issue of certificates

The Ministry of Foreign Affairs will issue certificates to approved recipient undertakings in Norway. A certificate shall contain information about the competent authority issuing the certificate, the name and address of the recipient, the period of validity of the certificate and a statement of the conformity of the recipient with the criteria for certification. The certificate may also contain conditions relating to the provision of information required for the verification of compliance with the criteria for certification referred to in section 13, second paragraph, as well as the suspension or revocation of the certificate. The period of validity of certificates will be established by the Ministry of Foreign Affairs, but may not exceed five years. Certified recipients in Norway will be reported to the EU's central register, which is published on the European Commission's website.

Section 15 Monitoring of certified undertakings

The Ministry of Foreign Affairs will, at least every three years, monitor the compliance of recipients with the criteria for certification referred to in section 13, second paragraph, and with any condition attached to the certificates, as referred to in section 14. If a certified undertaking no longer satisfies the criteria, the Ministry of Foreign Affairs will require the undertaking to take appropriate measures to ensure that all the criteria and conditions are fulfilled. The Ministry of Foreign Affairs may also suspend or revoke certificates.

Chapter 5 Registration, reporting and follow-up

Section 16 Registration

Suppliers shall keep detailed and complete records of exports of defence-related products included in List I, which constitutes Annex I to these regulations. Such records shall include documents containing the following information:

- a) a description of the defence-related product and its reference under List I;
- b) the quantity and value of the defence-related product;
- c) the dates of transfer;
- d) the name and address of the supplier and of the recipient;
- e) where known or required under section 24, the end-use and end-user of the defence-related product;
- f) proof that any information on export limitations has been transmitted to the recipient;
- g) customs declaration including shipping number and serial number.

Section 17 Reporting

The supplier shall report to the Ministry of Foreign Affairs on a quarterly basis, using the prescribed form, on all exports and transfers of defence-related products included in List I.

Section 18 Record-keeping

The supplier shall keep records and licences for at least ten years from the end of the calendar year in which the export took place. The Ministry of Foreign Affairs may require the supplier to provide this information for control purposes.

Section 19 Information on terms and conditions

The supplier shall inform the recipient of the terms and conditions of the licence, including limitations relating to end-use or re-export.

Section 20 Follow-up of exports

The supplier shall ensure that any transfers or exports of defence-related products, dual-use items, technology or services are in accordance with the licence granted, are re-delivered to the destination stated in the licence, that the description or quantity of products, technology or services exported does not deviate from the quantity or description stated in the licence, that the export is effected within the period of validity of the licence, and that any special conditions set out in the licence have been met.

Section 21 Control measures at the time of export

When exporting products or technology to which the licensing requirement applies, the supplier shall present a valid licence to the customs authorities at the latest at the time of submission of the customs declaration.

Chapter 6 General provisions

Section 22 Licence applications

Licence applications shall be submitted in writing using the prescribed application form signed by a person authorised to act on the supplier's behalf. For transfer licences, the special rules set out in Chapter 3 also apply. The supplier shall provide any information or documentation the Ministry of Foreign Affairs considers necessary for the processing of the application. An export licence will not be granted on the basis of considerations such as the fact that binding agreements have been entered into or that payment has been received.

Agreements on the export of products to which the licensing requirement applies should always include a proviso stating that the export is subject to a successful application for a licence.

Section 23 Conditions for granting licences

The Ministry of Foreign Affairs may set conditions for granting licences under these regulations that are compatible with the purpose of the Act of 18 December 1987 No. 93 relating to control of the export of strategic goods, services, technology, etc.

Section 24 End-user statement

The Ministry of Foreign Affairs may require the supplier to submit an end-user statement.

Section 25 Revocation of licences

A licence granted under these regulations may be revoked or suspended or its scope limited if the supplier misuses the licence or fails to comply with the conditions specified in the licence. The same applies if the supplier acts in contravention of the provisions of these regulations. A licence may also be revoked or suspended or its scope limited if new information emerges or the political situation or conditions in the recipient state or area change, and this significantly alters the basis on which the licence was granted. The general rules concerning the reversal of individual decisions also apply.

Section 26 Alterations to, extension or transfer of licences

A supplier must apply to the Ministry of Foreign Affairs for alterations or extensions of a valid licence or to transfer a valid licence to another entity.

Section 27 Return of licences

A licence that has not been used or cannot be used as intended is to be returned to the Ministry of Foreign Affairs accompanied by a statement explaining why it cannot be used. Similarly, a statement must be submitted if a valid licence is lost.

Chapter 7 Final provisions

Section 28 Entry into force

These regulations enter into force immediately. The Regulations of 10 January 1989 No. 51 relating to the implementation of control of the export of strategic goods, services and technology are repealed from the same date.



Appendix I to the Regulations relating to the export of defence-related products, dual-use items, technology and services.

List I – defence-related products (2020)

(cover page only)

This list corresponds with the EU Common Common Military List adopted on 17 February 2020.

[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XG0313\(07\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XG0313(07))

The EU Common Military List implements the export controls agreed under the Wassenaar Arrangement (WA) and included in its Munitions List (ML). ML codes have been used for this reason.

Comments:

- As part of its export control regime for defence-related products, the EU draws up a list called the EU Common Military List with the same content as the list of defence related products that constitutes the Annex to the Directive. The list below sometimes refers to the EU Common Military List, but the content of the two lists is identical.
- There are also references to the EU Dual-Use List. The content of this list is identical to that of Norway's List II – dual-use items.
- Terms that are stated in "quotation marks" are defined terms. These emerge from appendix "Definitions of terms used in this list».
- In some cases, chemicals are listed by name and CAS number. The list includes chemicals with the same structural formula (including hydrates) regardless of name or CAS number. CAS numbers are given to identify a particular chemical or a mixture, independent of nomenclature. CAS numbers cannot be used as unique identifiers because some forms of the listed chemical have different CAS - numbers, and mixtures containing a listed chemical may also have different CAS numbers.



Appendix II to the Regulations relating to the export of defence-related products, dual-use items, technology and services

List II – dual-use items (2019)

(cover page only)

This list corresponds to Annex I to Council Regulation (EC) No 2009/428, most recently amended by Regulation (EU) No 2021/821 of 20. May 2021.

http://data.europa.eu/eli/reg_del/2019/2199/oj

The EU's list of dual-use items implements internationally agreed dual-use controls: the Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers' Group (NSG), the Australia Group and the Chemical Weapons Convention (CWC) and combines the control lists of all these regimes.

Comments:

- In some places, the text refers to 'military goods'. This is to be understood to mean the content of Norway's List I – defence-related products.
- There are also references to Annex I this means the actual content of Norway's List II.
- References to 'Member States' include Norway since Norway uses the same list as the EU.

Annex 3

Guidelines of 28 February 1992 for the Ministry of Foreign Affairs when dealing with applications concerning the export of defence-related products, as well as technology and services for military purposes

1.1 Scope

These guidelines are for the Ministry of Foreign Affairs when dealing with applications concerning the export of defence-related products, equipment designed or modified for military use, and technology and services for military use, cf. the Act of 18 December 1987 No. 93 relating to control of the export of strategic goods, services, technology, etc., (the Export Control Act) and the Regulations of 19 June 2013 No. 718 relating to the export of defence-related products, dual-use items, technology and services (the Export Control Regulations). The guidelines may also be used when dealing with applications concerning the export of dual-use items and related technology and services for military end use. They do not apply to the export of insignificant quantities of products that are not intended for military or police use.

1.2 Purpose

The purpose of these guidelines is to set out the procedures and criteria used by the Ministry of Foreign Affairs when dealing with applications as described in 1.1.

1.3 Departure from the guidelines

The Ministry of Foreign Affairs may depart from these guidelines in individual cases if special considerations are to be taken into account.

2. General principles and assessment criteria

2.1 Basis for assessment

The assessment of applications as described under 1.1 above is to be based on the Government's statement of 11 March 1959 and the Storting's decision of the same date, along with the clarification unanimously endorsed by the Storting in 1997, cf. 2.2. The Government considers the Storting's decision to be mandatory, and the export control system shall ensure that it is complied with.

The assessment of applications of this kind should also be based on Article 2 of EU Council Common Position 2008/944/CFSP on exports of military technology and equipment, and Articles 6 and 7 of the UN arms trade treaty (ATT) of 3 April 2013, see Appendices A and B.

2.2 The Government's statement, the Storting's decision and the Storting's clarification

a) The Government's statement, 1959: 'In making the decision, importance shall be attached to foreign and domestic policy assessments, and the primary consideration should be that Norway will not permit the sale of arms or munitions to areas where there is a war or the threat of war, or to countries where there is a civil war.'

- b) The Storting³'s decision, 1959: 'The Storting takes note of the statement made by the Prime Minister on behalf of the Government. The Storting declares most emphatically that arms and munitions may be exported from Norway only after a careful assessment of the foreign and domestic policy situation in the area in question. In the Storting's opinion, this assessment must be conclusive of the question whether such goods are to be exported.'
- c) The Storting's clarification of 1997: 'an assessment by the Ministry of Foreign Affairs should include consideration of a number of political issues, including issues relating to democratic rights and respect for fundamental human rights.'

2.3 Specific grounds for refusal

In addition to the principles that follow from the Government's statement and the Storting's decision, applications as described under 1.1 shall be refused on the basis of Appendix A (EU Common Position Criteria One to Four) and Appendix B (ATT Articles 6–7) if:

- a) The export would be inconsistent with Norway's international obligations (cf. EU Criterion One, and ATT Article 6),
- b) there is a clear risk that the military technology or equipment to be exported might be used for internal repression; (cf. EU Criterion Two, and ATT Article 7),
- c) the export would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination (cf. EU Criterion Three),
- d) there is a clear risk that the intended recipient would use the military technology or equipment to be exported aggressively against another country or to assert by force a territorial claim (cf. EU Criterion Four),
- e) knowledge is available at the time of authorisation that the arms or items would be used in the commission of genocide, crimes against humanity, or war crimes (cf. ATT Article 6),
- f) it is highly probable that the military equipment would be used to commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism or to transnational organised crime (cf. ATT Article 7).

2.4 Specific assessment criteria

When dealing with applications as described in 1.1, in addition to the principles that follow from the Government's statement and the Storting's decision, particular account shall be taken of the following points, based on Appendix A (EU Criteria 5–8) and Appendix B (ATT Article 7):

- g) the national security of Norway, as well as that of friendly and allied countries (cf. EU Criterion Five),
- h) the behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law (cf. EU Criterion Six),
- i) the existence of a risk that the military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions (cf. EU Criterion Seven),
- j) the compatibility of the exports of the military technology or equipment with the technical and economic capacity of the recipient country, taking into account the desirability that states should meet their legitimate security and defence needs with the least diversion of human and economic resources for armaments (cf. EU Criterion Eight),
- k) the risk of the arms or items being used to commit or facilitate serious

³ Norway's Parliament

acts of gender-based violence or serious acts of violence against women and children (cf. ATT Article 7).

3. Categories of products and groups of countries

3.1 Categories of products

When dealing with applications, the following categories of products are to be used:

a) Category A:

This category includes arms, ammunition and certain types of military equipment and components. It also includes other equipment with the strategic capacity to influence the military balance of power beyond the immediate vicinity.

b) Category B:

This category includes other defence-related products that do not have such properties or areas of application as specified for category A.

3.2 Groups of countries

When dealing with applications, the following groups of countries are to be used:

a) Group 1 comprises the Nordic countries and member countries of NATO, as well as certain other like-minded countries.

b) Group 2 comprises countries other than those included in group 1, which have been approved as recipients of products in category A following consideration by the Government.

c) Group 3 comprises countries that do not belong to group 1 or 2 and to which Norway does not sell category A weapons and ammunition, but which may, after an assessment, receive other defence-related products defined as belonging to category B.

d) Group 4 comprises countries to which Norway does not sell category A or B products because they are located in an area where there is a war or the threat of war, countries where there is a civil war, countries to which, on the basis of a careful assessment of the foreign and domestic policy situation in the area, it is inadvisable to export arms and military equipment and components, or countries covered by binding sanctions adopted by the UN Security Council or other arms embargo regimes and measures that Norway has aligned itself with.

4 The export of products with independent functions

4.1 Country of final destination

The assessment of applications to export products with independent functions shall always be based on the country of final destination, irrespective of whether the products are to be exported directly to the country of final destination or via a third country.

4.2 Category A

The following criteria are to be taken into account when dealing with applications to export products with category A products with independent functions:

a) Products in category A may not be exported to any end-users other than government authorities. However, hunting and competition weapons may be exported to recipients approved by the authorities in the recipient state.

b) An export licence will normally be granted for the export of products in category A if the customer is, or is acting on behalf of, the defence authorities of a country belonging to group 1, provided that this is substantiated by documentation.

c) A licence to export products in this category to countries other than those belonging to group 1 must be dealt with by the Government. Countries that are approved as recipients of products in category A following consideration by the Government comprise group 2. The granting of a licence in such cases requires the submission of an officially confirmed end-user statement containing a re-export clause, i.e. a statement to the effect that re-export must not take place without the approval of the Norwegian authorities.

4.3 Category B

An export licence will normally be granted for category B products for countries in groups 1, 2 and 3, provided that satisfactory documentation on end use and the end user has been submitted.

4.4 Group 4

Category A and category B products cannot be exported to countries in group 4, unless special considerations should be taken into account.

5 Export of equipment originally designed or modified for military use

5.1 Equipment not of military use

A licence can be granted for exports of equipment originally designed or modified for military use, but which is no longer considered to be of any military use, to recipients in country groups 1, 2 and 3, provided that satisfactory documentation on end use and the end user has been submitted.

6 The export of parts and components

6.1 Definition

For the purpose of these guidelines, the export of parts and components means the export of products that have no independent function.

6.2 Parts and components to be exported in accordance with cooperation agreements

In the case of parts and components that are to be exported in accordance with cooperation agreements with enterprises or the authorities of another country, an export licence shall be granted if the agreement has been approved by the Norwegian authorities. Cooperation agreements with group 1 countries should normally be approved, provided that the Norwegian parts, subsystems or components are integrated with parts from other sources, and the finished product is not designated as Norwegian. In such cases, the documentation substantiating the end-use of the finished product may be dispensed with.

6.3 Other exports of parts and components

a) As regards the export of parts and components for projects which have not been officially approved and where the export is based on technology available on the market and on the basis of the customer's product specification, a licence shall generally be granted for export to countries which do not belong to group 4 if the finished product is not designated as Norwegian. In such cases, the documentation substantiating the end-use of the finished product may be dispensed with.

b) Applications for export licences for parts or components of types other than those mentioned in 6.2 and 6.3 a) shall be dealt with in the same way as exports of finished products.

7 The export of technology, including production rights and technical data

7.1 Definition

Technology means knowledge, information and documentation of crucial importance for the development, production, maintenance or use of a product.

7.2 Production rights

Applications to transfer production rights shall be dealt with with a view to ensuring that the purpose of the transfer is not to circumvent Norwegian export controls.

7.3 Export of technology in accordance with approved cooperation agreements

A licence to export technology in accordance with cooperation agreements with enterprises or the authorities of other countries shall be granted provided that the agreement has been approved by the Norwegian authorities.

7.4 Export of technology not included in approved cooperation agreements

a) General provisions

When dealing with applications for exports which are not part of an officially approved process of cooperation, the category to which the finished product will belong shall be ascertained.

b) Production rights for category A products

In the case of exports of production rights for category A products, a licence may only be granted for transfers to countries belonging to groups 1 and 2, in accordance with principles corresponding to those which otherwise apply to the export of products in this category. Licences are subject to the condition that the Norwegian seller of the production rights is required to incorporate into the terms of the contract a reservation to the effect that any transfer or re-export of production rights must be submitted to the Norwegian authorities for approval. Applications for transfer or re-export of production rights shall be dealt with in the same way as direct transfers of production rights from Norway.

c) Production rights for category B products

Licences shall generally be granted to transfer production rights for products in category B to countries in groups 1, 2 and 3. In such cases, the Ministry of Foreign Affairs' requirements as to documentation and terms of contract must be based on a concrete assessment which takes into account is taken of the properties of the product, the export policy of the country of production, the internal situation in the country of production, and the risk of the product being exported to an undesirable recipient.

d) Other technology transfers

It is not possible to draw up detailed guidelines for other types of technology transfers. Applications will have to be assessed on the basis of the extent to which the transfer of technology is relevant for a product's military function. The greater the relevance, the more important it is to base the assessment on the guidelines for the export of finished products in the corresponding category.

8 Services

8.1 General provisions

Services may be connected to the development, production, maintenance or use of a product, but need not be connected to a particular product for an export licence to be required under sections 3, 5 and 7 of the Regulations. The same applies to military planning.

8.2 Services connected to defence-related products

The same guidelines apply to licences for services connected to defence-related products that are essential to the development, production, maintenance or use of such products as to licences for the products themselves.

8.3 Other services

As regards services that are not connected to particular products, but that concern military planning, licences should generally be granted for export to countries in groups 1 and 2 but not to countries in group 4. For countries in group 3, applications must be considered individually on the basis of the anticipated military effects and any possible political effects.

9 Cooperation and development projects

9.1 Projects approved by the Norwegian defence authorities

The export of products, services and technology to countries with which Norway has concluded cooperation agreements shall be permitted if such export is effected in connection with a project that has been approved by the Norwegian defence authorities and whose primary objective is to safeguard the defence needs of the country in question. If the finished product is not designated as Norwegian, it may be re-exported in accordance with the export control rules of the country in question.

9.2 Multinational products

In cooperative projects that are of such a nature that the identity of the finished product appears to be multinational, the export control rules of the country of production can be applied to exports to third countries. In connection with the approval of the cooperative project, the conditions for the export of the finished product to a third country will be agreed by the authorities of the countries involved.

10 Procedures

10.1 Processing time for applications

The Ministry of Foreign Affairs should make a final decision on applications covered by these guidelines at the latest within twelve weeks in the case of products in category A, and at the latest within six weeks in the case of other applications.

10.2 Submission to the Government

If an export licence application concerns important defence matters, cooperation with other countries concerning equipment, or business interests, it shall be submitted to the Government in an appropriate manner.

10.3 Technical expertise

If necessary when assessing technical aspects and areas of application for products, technology, technical data or services, the Ministry of Defence as represented by the Norwegian Defence Research Establishment may be consulted.

Appendix A⁴

Criterion One: Respect for the international obligations and commitments of Member States, in particular the sanctions adopted by the UN Security Council or the European Union, agreements on non-proliferation and other subjects, as well as other international obligations. An export licence should be refused if approval would be inconsistent with, *inter alia*:

- a) the international obligations of Member States and their commitments to enforce United Nations, European Union and Organisation for Security and Cooperation in Europe arms embargoes;
- b) the international obligations of Member States under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;
- c) the commitment of Member States not to export any form of anti-personnel landmine;
- d) the commitments of Member States in the framework of the Australia Group, the Missile Technology Control Regime, the Zangger Committee, the Nuclear Suppliers Group, the Wassenaar Arrangement and The Hague Code of Conduct against Ballistic Missile Proliferation.

Criterion Two: Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law.

— Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States shall:

- a) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used for internal repression;
- b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the military technology or equipment, to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe; For these purposes, technology or equipment which might be used for internal repression will include, *inter alia*, technology or equipment where there is evidence of the use of this or similar technology or equipment for internal repression by the proposed end-user, or where there is reason to believe that the technology or equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with Article 1 of this Common Position, the nature of the technology or equipment will be considered carefully, particularly if it is intended for internal security purposes. Internal repression includes, *inter alia*, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

— Having assessed the recipient country's attitude towards relevant principles established by instruments of international humanitarian law, Member States shall:

- c) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law.

Criterion Three: Internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts. Member States shall deny an export licence for military technology or equipment which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.

Criterion Four: Preservation of regional peace, security and stability.

Member States shall deny an export licence if there is a clear risk that the intended recipient would use the military technology or equipment to be exported aggressively against another country or to assert by force a territorial claim. When considering these risks, Member States shall take into account *inter alia*:

- (d) the need not to affect adversely regional stability in any significant way.

- a) the existence or likelihood of armed conflict between the recipient and another country;
- b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;

⁴ By amendment of 20th May 2009

Norway 2022

- c) the likelihood of the military technology or equipment being used other than for the legitimate national security and defence of the recipient;
- d) the need not to affect adversely regional stability in any significant way.

Criterion Five: National security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries.

Member States shall take into account:

- a) the potential effect of the military technology or equipment to be exported on their defence and security interests as well as those of Member States and those of friendly and allied countries, while recognising that this factor cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability;
- b) the risk of use of the military technology or equipment concerned against their forces or those of Member States and those of friendly and allied countries.

Criterion Six: Behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law.

Member States shall take into account, *inter alia*, the record of the buyer country with regard to:

- a) its support for or encouragement of terrorism and international organised crime;
- b) its compliance with its international commitments, in particular on the non-use of force, and with international humanitarian law;
- c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions referred to in point (b) of Criterion One.

Criterion Seven: Existence of a risk that the military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions. In assessing the impact of the military technology or equipment to be exported on the recipient country and the risk that such technology or equipment might be diverted to an undesirable end-user or for an undesirable end use, the following shall be considered:

- a) the legitimate defence and domestic security interests of the recipient country, including any participation in United Nations or other peace-keeping activity;
- b) the technical capability of the recipient country to use such technology or equipment;
- c) the capability of the recipient country to apply effective export controls;
- d) the risk of such technology or equipment being re-exported to undesirable destinations, and the record of the recipient country in respecting any re-export provision or consent prior to re-export which the exporting Member State considers appropriate to impose;
- e) the risk of such technology or equipment being diverted to terrorist organisations or to individual terrorists;
- f) the risk of reverse engineering or unintended technology transfer.

Criterion Eight: Compatibility of the exports of the military technology or equipment with the technical and economic capacity of the recipient country, taking into account the desirability that states should meet their legitimate security and defence needs with the least diversion of human and economic resources for armaments. Member States shall take into account, in the light of information from relevant sources such as United Nations Development Programme, World Bank, International Monetary Fund and Organisation for Economic Cooperation and Development reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. They shall consider in this context the recipient country's relative levels of military and social expenditure, taking into account also any EU or bilateral aid.

Appendix B

Summary of Article 6 and Article 7 of the Arms Trade Treaty (ATT)

Article 6 concerns transfers of conventional arms or items that are prohibited under the ATT. This includes transfers that would violate a State Party's obligations under measures adopted by the UN Security Council, in particular arms embargoes, transfers that would violate a State Party's other obligations under international agreements to which it is a Party, and transfers for which there is available knowledge at the time of authorisation that the arms or items would be used in the commission of genocide, crimes against humanity, or other war crimes. Furthermore, it follows from Article 6 that military equipment and components exported must satisfy the requirements for the methods and means of warfare set out in international humanitarian law.

Article 7 concerns the conditions and criteria for exports of conventional arms and items under the ATT. A prior assessment is to be made of the possible consequences of the exports for peace and security, and of the potential that the arms or items could be used to commit or facilitate a violation of international human rights law, international humanitarian law, or international conventions or protocols relating to terrorism or to transnational organised crime. If there is an overriding risk of any of these negative consequences, the exporting State Party shall not authorise the export. In its prior assessment, the exporting State Party shall also take into account the risk of the conventional arms or items being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children