

## **National legislation on transfer of arms, military equipment and dual-use goods and technology**

*The Permanent Mission of Finland to the United Nations presents its compliments to the Office for Disarmament Affairs and with reference to the latter's note ODA/3-2010/NLDU of February 4<sup>th</sup> 2010 has the honour to convey the following information from the Finnish Government.*

### **Legal basis and national licensing guidelines (Small Arms and Light Weapons classified as civilian firearms)**

The Firearms Act and Decree, in force since 1 March 1998, implement the EU Council Directives on control of the acquisition and possession of weapons (91/477/EEC) as well as on placing on the market and supervision of explosives for civil uses (93/15/EEC).

The Act and Decree regulate acquisition, manufacture, conversion and repair, possession, trade, import and export, transfer and transit of firearms, firearm components, cartridges and especially dangerous projectiles.

The concept of transit covers all transports through the Finnish territory.

As a general rule, an authorization may be issued if an acceptable justification exists for the granting of the authorization and if there is no reason to suspect that the authorization or the objects acquired or possessed are misused. The specific licenses are subject to additional requirements.

The police department of the place of residence of the applicant shall grant and revoke a permit for acquisition, possession and private manufacture and conversion, private import and transfer of firearms.

Trade permit for dealing (trade, manufacture, repair and conversion for commercial purposes) is subject to a license issued by the National Police Board.

Commercial transfer, import, export and transit are subject to an authorization by the National Police Board. Same authority shall also grant and revoke a commercial prior consent.

In the Firearms Act the licensing of exports and transfers is based on separate procedures. Export refers to transport from Finland to a country other than a European Union Member State whereas transfer refers to transport from one European Union Member State to another. Transit refers to transport from a country other than a European Union Member State via Finland to another country other than a European Union Member State.

A commercial transfer license may be granted if, in accordance with a notification of the authority of the country of destination, there are no obstacles for the transfer and if the transfer conditions are safe.

The authority granting the commercial export permit may require that an end-user certificate or other reliable account is presented stating that there are no obstacles for the

granting of the permit. A commercial transit permit may be granted to an applicant who presents an end-user certificate or other account stating that there are no obstacles for the granting of the permit. According to the firearms act the permit authority ascertains if so required by the handling of the permit issue, from the Ministry for Foreign Affairs that there are no foreign or security-policy obstacles for the granting of the permit.

In practice, the assessment of the foreign or security-policy aspects is made according to the same basic principles as with the export and transit of defense materiel. An export license is not granted if the Ministry for Foreign Affairs states that there is a foreign or security-policy obstacle to export.

## **Sanctions**

The sanctions of non-compliance with the Firearms Act are stipulated in sections 1 - 3 of the Chapter 41 of the Penal Code. Any person who illegally transfers or imports into Finland, transfers from Finland, transports, transits or manufactures for a commercial purpose or markets, acquires, possesses or conveys a firearm, firearm component, cartridges and specially dangerous projectiles shall be sentenced for a firearm crime to a fine or to imprisonment not exceeding two years. Under aggravating circumstances, the maximum punishment is imprisonment for four years, and the minimum punishment imprisonment for four months (a gross firearms crime).

## **Dual-use goods legislation**

Finnish Dual-use goods legislation implement the Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (recast), Act on the Control of Exports of Dual-Use Goods (562/1996, as amended) and Government Decree on the Control of Exports of Dual-Use Goods (924/2000, as amended).

## **National legislation on transfer of arms and military equipment**

The basic principles, policies and national practices on the export of conventional arms and related technology are embodied in the relevant Finnish legislation. Export or transit of defence materiel is allowed only if authorisation (an export licence) has been granted. Authorisation shall not be granted if it jeopardises Finland's security or is in contradiction with Finland's foreign policy.

These basic principles in the Act on the Export and Transit of Defence Materiel are supplemented by clarifying rules contained in the national Guidelines. According to them, the following factors shall be taken into account in the overall assessment of licence applications:

- foreign and security policy aspects, including the relevant UN, OSCE, EU and other international obligations be they decisions on arms embargoes, multilateral restraints, criteria, principles or guidelines of multilateral export control regimes
- analysis of the situation prevailing in the recipient country, especially with regard to human rights, including attitudes of other States vis-à-vis the recipient country
- characteristics, intended use and military significance of the item to be exported

- significance of the item and export in relation to the materiel preparedness of Finnish national defence and to the development of domestic defence industry.

The EU Code of Conduct on Arms Exports is incorporated in the Finnish legislation as an annex to the national Guidelines. Accordingly, all applications are assessed on a case-by-case basis. In ambiguous cases, restraint should be preferred. If the export of the item in question, by virtue of its characteristics and significance, will not lead to, or will in all likelihood not be used in violations of human rights, offensive armed action or other comparable unacceptable purposes inside or outside the recipient country, granting of a licence may be recommended if the overall assessment is otherwise favourable and if the formal licensing requirements have been met. There are specific rules for the export licensing of components and subsystems of any defence equipment.

Relevant legislation:

**Act on the Export and Transit of Defence Materiel (242/1990, amendments up to 900/2002 included)**

- a concise framework law stipulating the authorisation and procedure as well as sanctions in case of violations
- establishes the following responsibilities for various authorities:
  1. Ministry of Defence (MoD): licensing authority
  2. Council of State (Council of Ministers): grants licences in all major exports; affirms the guidelines
  3. Ministry for Foreign Affairs (MFA): responsible for foreign and security policy considerations
  4. Customs: enforcement

**General Guidelines for the Export and Transit of Defence Materiel (1000/2002)**

- assists in the application of the Act by giving clarifying rules of foreign and security policy substances as well as of procedural substance
- assists also in the implementation of the international agreements and obligations of Finland in the field of export of defence equipment
- incorporates the international norms to the domestic legislation by explicit references to the OSCE Principles on arms transfers, the EU Code of Conduct on Arms Exports, decisions on arms embargoes by the UNSC or the EU etc. and integrates these sets to the Guidelines as its annexes.

**Decree on the Export and Transit of Defence Materiel (108/1997, amendments up to 100/2003 included)**

- establishes the coverage of controls by defining the list of defence materiel, by main headings, classified into four item categories (based on characteristics, intended use and military significance of the items)
- by the Act, the coverage includes "related technology" as authorisation is also needed for yielding control or transfer abroad of any:
  - know-how and licence to manufacture materiel
  - machine tools and equipment especially designed for manufacturing materiel

- computer software relating to the manufacture or use of materiel
- the export of technology shall require an export licence even if such technology is intended for development, production or use of an item which is not defined as defence materiel
- authorisation is not required for the exports of technology which is necessary for the installation, use, maintenance, inspection, or repair of an already licenced item
- nor is authorisation required for the export of technology which is widely available internationally or related to basic scientific research.

**Decree of the Ministry of Defence (192/1997, amendments 59/2002 and 543/2002)**

- implements the the EU Common List of Military Equipment as well as the Munitions' List of the Wassenaar Arrangement

The MoD is the competent licensing authority in exports of military goods<sup>1</sup>. The Ministry for Foreign Affairs is responsible for foreign and security policy considerations. Exports with certain foreign and security political aspects or of high value are licensed by the Council of Ministers.

Licence applications, prior enquiries and matters concerning the definition of defence materiel are dealt with in an inter-agency group, Advisory Export Control Group, established and chaired by the Ministry of Defence with the participation of other authorities concerned: MFA, Ministry of Interior, Defence Staff, Security Police, and Customs. The MFA is in charge of presenting foreign and security policy considerations to the group. The group gives its opinion to the licensing authority (MoD/Government) which makes the final decision. The group takes no vote. In case of dissent no opinion can be given. The Council of State is the final authorizing body in case of divergencies between ministries (these rarely occur). The group holds meetings usually eight to twelve times per year.

A simplified licencing procedure is applied in the following situations:

1. List of countries with no foreign and security policy restraint (annex to the Guidelines 3.3.1):  
EU and EEA-countries, Switzerland and non-European member States of the OECD (Australia, Japan, Canada, New Zealand and the United States)
  2. The item to be exported are intended for use in a peace-keeping operation or in crisis management mission implemented or authorized by the UN or the OSCE.
- Licence granted by the MoD (if no significant financial value)
  - Opinion of the Advisory Export Control Group not necessary

The list of countries above is based on the countries' memberships in multilateral export control regimes that require the application of an efficient national export control system.

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<sup>1</sup> In Finland, civilian firearms and ammunition (i.e. hunting and sporting weapons and ammunition) are controlled under a different legislative framework (Firearms Act, 1/1998) and come with the competence of the Ministry of Interior.

However, every single licence application is assessed on a case-by-case basis to these countries as well.

The basic procedure (other countries of destination than those mentioned in the annex 3.3.1):

- Applications are processed in accordance with a product-based general assessment
- Opinion of the Advisory Export Control Group needed
- Licensing decision made by the MoD or the Council of State

An export licence to countries with simplified procedures takes normally 1-2 weeks. For other countries the review process takes normally somewhere between 3-4 weeks, sometimes more, depending on the need for further gathering of relevant information or meeting schedules of the Advisory Export Control Group.

The Ministry of Defence shall, upon request, advise, in response to a prior enquiry, on whether the intended export is acceptable on foreign and security grounds. No formal prior approval is however required for making a commercial offer or a contract. The applicant is advised to consult the authorities before making commercial engagements, just in order to avoid situations where an already negotiated order is not granted the necessary licence.

An export licence is the only document required to physically export the goods. Regarding export aspirations to more sensitive countries or end-users, the applicants are often advised to make a request for a preliminary statement by the Advisory Export Control Group prior to applying for an actual export licence.

Almost all export licences are individual licences. We have a few general licences granted to Finnish Defence Forces and to a couple of private companies. In these cases, general licences have been regarded necessary due to the high number of frequent similar exports. In the case of the Defence Forces, for example, the maintenance or reparations of materiel abroad can be regarded to take place so frequently that applying for a separate licence every time would be impractical. No general licences have been granted for exports to states outside the list presented in the annex to the Guidelines 3.3.1. No global licences have been granted.

Technical or performance limitations can be applied if necessary, but this is only seldom done. Commercial contracts can be analysed in order to verify that the scope an export is adequately defined and, if necessary, confined. An original end-use certificate (which includes a non-re-exportation clause) is required if complete products are exported. In exports of sub-systems, components or powder, the consignee's declaration of use in own production is required. Re-export of the complete products will be managed on the basis of the export legislation of the country of destination. The specific form of end-use and re-export documentation is applied on a case-by-case basis, depending on the nature of the export.

Finland has signed Memorandum of Understanding – agreements with certain countries. These MOUs can include terms on which classified information is being managed.

An extraterritorial scope of application has been included in the new legislation on brokering; if a brokering transaction takes place outside Finnish territory, a licensing

requirement applies whenever the broker is a Finnish citizen, a Finnish legal entity or a Finnish resident.

All licence applications for the exports of military goods are directed to the MoD. MoD is also the point of contact in all other transactions concerning military goods. Every licensing decision can be subjected to an appeal. Information on how to make an appeal is attached to every licensing decision document that an applicant receives.

There are different kinds of licenses for definitive exports, temporary exports, and transfers of defence materiel. Post-shipment controls can be applied, though in most cases the necessary documentation is gathered and analysed when assessing the licence application in the first place. Import licence/dealer's licence is required if the importer is a private person or company.

Regarding export of components the procedures concerning the assurances on end use will be adjusted to match the degree of Finnish share and identity in the assembled product. At one extreme, there is an independent product manufactured and assembled wholly in Finland and, at the other extreme, a separate, non-independent subsystem or individual component used in the assembly of the final product in the recipient country.

A possible re-export of such a subsystem or component from a country from which a certificate on use in own production has been obtained shall be governed by the export control regulations of that country. Export of powder will be equated to the export of components in cases when powder is intended for use as raw material for producing cartridges or ammunition. The export policies by the country purchasing components will be taken into account in deciding upon authorization. The significance of the component in terms of the final product of which it will be a part will be taken into account in the general assessment of the licence application.

Anyone who has been granted an export licence shall provide the Ministry of Defence with a Customs clearance certificate issued by the Customs authority of the recipient country as a verification of import of the licensed export as well as on a quarterly basis, of the materiel exported or transported in transit. The MoD collects and stores the information and maintains a database of all licences granted. Export licences are public documents in Finland, as are transit and brokering licences, and available for reading or photocopying at the MoD registry. The MoD publishes detailed statistics of all licences granted on an annual basis.

Information on our export control system is available at [www.defmin.fi](http://www.defmin.fi)  
( go to: *resources / procurement and export control / export control*).

*The Permanent Mission of Finland to the United Nations avails itself of this opportunity to renew to Department of Disarmament Affairs the assurances of its highest consideration.*