

## **Guidelines of 28 February 1992 for the Ministry of Foreign Affairs when dealing with applications concerning the export of arms, military equipment and components, and technology and services for military use**

### *I. Purpose and scope*

1. These guidelines apply to the procedures to be followed by the Ministry of Foreign Affairs when dealing with applications for the export of arms, military equipment and components, and technology and services for military use.

The licensing rules do not apply to the export of insignificant quantities of goods which are not intended for military or police use.

The export control system is based on the following excerpts from the Government's statement of 11 March 1959 and the Storting's decision of the same date:

#### The Government's statement:

“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.”

#### The Storting's decision:

“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.”

In 1997, the Storting unanimously endorsed a clarification made stating that “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.”

The Government considers the Storting's decision to be mandatory, and the export control system is intended to ensure that it is complied with.

When dealing with licence applications, the Ministry of Foreign Affairs also bases its decisions on the criteria set out in Appendix A to these Guidelines. These reflect Article 2 of Council Common Position 2008/944/CFSP on exports of military technology and equipment, with which Norway has aligned itself.

2. As regards implementation of the export control system, the Act of 18 December 1987 No. 93 relating to control of the export of strategic goods, services,

technology, etc. (hereinafter referred to as the Export Control Act), and the Regulations of 10 January 1989 No. 51 relating to the implementation of control of the export of strategic goods, services and technology (hereinafter referred to as the Regulations) are applicable.

These guidelines are advisory and establish the principles the Ministry of Foreign Affairs is to apply when dealing with arms export matters under the Export Control Act and the Regulations.

Any consideration of licence applications under section 1 of the Regulations shall be based on these guidelines.

3. Owing to the advances in military technology since 1959, the considerations underlying the Government's statement and the Storting's decision can only be pursued by means of an export control system which extends beyond what is directly implied by the wording of the statement and the decision. These guidelines are intended to ensure that this is the case. Thus, they apply to the consideration of applications for export licences not only for arms and munitions, but also for other equipment designed or modified for military use (see Chapter V), for parts and components (see Chapter VII), and for technology and services (see Chapter VI and VIII, respectively).
- 4.1 When dealing with licence applications, it is essential to bear in mind that in many cases the scope of the licensing requirement may be wider than the power to prohibit export conferred by section 1 of the Export Control Act. Thus, before a licence application is refused, it must be substantiated that the statutory conditions for doing so have been met. It is particularly important to make an assessment of the legal authority for refusing applications when dealing with licence applications for the export of goods of limited military significance, of parts and components, or of technology and services.

## *II. Groups of countries and categories of goods*

1. In order to facilitate the processing of licence applications, the following groups of countries are to be used:

Group 1 comprises the Nordic countries and member countries of NATO. The group also includes other countries if the Ministry finds that they may be approved by the Ministry as recipients of weapons.

Group 2 comprises countries 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 countries affected by a

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<sup>1</sup> Earlier item 4 on COCOM deleted on 1 February 1995

sanction adopted by the UN Security Council or other arms embargo regimes and measures that Norway has aligned itself with<sup>2</sup>.

Group 3 comprises countries that do not belong to group 1 or 2 to which Norway does not sell weapons and ammunition, but which may receive other equipment that is designed or modified for military use.

2. The following categories of goods are to be introduced:

Category A: Arms, ammunition and certain types of military equipment and components

This category includes all kinds of arms and ammunition.

It also includes other equipment that could be used effectively to influence the military balance of power beyond the immediate vicinity, including equipment for maritime surveillance and electronic measures against satellite-borne systems.

Category B: Other equipment and components designed or modified for military use.

This category includes other equipment designed or modified for military use specified in the Ministry of Foreign Affairs List I (Arms, ammunition, other military equipment and components and related technology) which does not have such properties or areas of application as specified for category A.

### *III. Cooperation and development projects*

The export of goods, 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 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.

### *IV. Multinational products*

In cooperation projects which 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 may be applied to exports to third countries. In connection with the approval of the cooperation project, the conditions for the export of the finished product to a third country shall be agreed by the authorities of the countries involved.

### *V. The export of goods with independent functions*

1. Export licence applications are to be dealt with regardless of whether the goods are to be exported directly or indirectly to the recipient country.

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<sup>2</sup> Decisions on embargoes or other sanctions adopted by the European Union (EU) or the Organization for Security and Cooperation in Europe (OSCE) and implemented by means of Norwegian regulations.

2. Products in category A may not be exported to any end-users other than government authorities. The primary consideration should be that products belonging to category A or category B may not be exported to countries in group 2.
3.
  - a) An export licence will normally be granted for the export of goods in category A if the customer is, or is acting on behalf of, the defence authorities of a country belonging to group 1. This must be substantiated by documentation.

A licence to export goods in this category to countries other than those belonging to group 1 must be dealt with by the Government, and the granting of such a licence 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.

- b) For goods in category B, a licence shall be granted for export to countries in groups 1 and 3.

Documentation substantiating the end-user shall be required.

#### *VI. The export of technology, including production rights and all forms of technical information*

1. For the purpose of these guidelines, technology means knowledge, information and documentation of crucial importance for the development, production, maintenance or use of goods.
2. 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.
3. Permission to export technology in accordance with cooperation agreements with enterprises or the authorities of other countries shall be granted in cases where the agreement has been approved by the Norwegian authorities.
4. 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.
  - a) In the case of production rights for goods in category A, permission may only be granted for transfers to countries belonging to group 1 and in accordance with principles corresponding to those which otherwise apply to the export of goods in this category.

Permission is subject to the condition that the Norwegian seller of the production rights is also required to incorporate into the terms of the contract a reservation to the effect that any sublicensing of production rights will be submitted to the Norwegian authorities for approval. The Ministry of Foreign Affairs shall deal with applications for sublicensing in the same way as direct transfers of production rights from Norway.

- b) Permission shall generally be granted to transfer production rights for goods in category B to countries in groups 1 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 in which account is taken of the properties of the product, the export policy of the country of production, and any detrimental effects should the product be exported to an undesirable recipient.
5. 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 how closely 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.

#### *VII. The export of parts and components*

1. For the purpose of these guidelines, the export of parts and components means the export of goods which have no independent function.
2. 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. In such cases, the Norwegian parts or components must be integrated with parts from other sources, and the finished product must not be designated as Norwegian.

In such cases, the documentation substantiating the end-use of the finished product may be dispensed with.

3. As regards the export of parts and components for projects which have not been approved officially 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 2 if the finished product is not designated as Norwegian. Documentation concerning the end-use of the finished product shall not be required.
4. Applications for export licences for parts or components of types other than those mentioned in items 2 and 3 shall be dealt with in the same way as exports of finished products. However, a departure from this rule may be justified by the provision of Chapter I, first sentence.

### *VIII. Provision of services*

1. Services may be connected to the development, production, maintenance or use of a product, but need not be connected to a particular product for permission to be required under section 1, d and f, of the Regulations. The same applies to military planning.
2. As regards the provision of services connected to military equipment belonging to categories A and B, and which are essential to the development, production, maintenance or use of such equipment, the conditions for granting permission to provide such services shall correspond to those for granting an export licence for the product itself. If the service is more remotely connected to the product, a less stringent practice may be considered.
3. As regards services that are not connected to particular goods, but that concern military planning, permission shall generally be granted for export to countries in group 1 but not to countries in group 2. For export to other countries, the granting of permission must be considered in the individual case on the basis of the anticipated military and any possible political effects, and must be approved by the Ministry.

### *IX. Procedures*

1. The Ministry of Foreign Affairs should make a final decision on applications dealt with according to 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.
2. If necessary when assessing technical aspects and areas of application for products, technology, technical information or services, the Ministry of Defence as represented by the Norwegian Defence Research Establishment may be consulted.
3. If an export licence application concerns important defence matters or cooperation with other countries concerning equipment, the opinion of the Ministry of Defence shall be obtained.
4. If an export application concerns important Norwegian commercial interests, the opinion of the Ministry of Trade and Industry shall be obtained.

## **Appendix A**