

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

Most recently amended: 28 November 2014

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 Storting'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 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 A¹

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.

¹ Tatt inn ved endring av retningslinjene 20.mai 2009

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;
 - 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.