

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 Appendix I to these regulations.

(2) “Dual-use item” means any product listed at any given time in List II, which constitutes Appendix II to these regulations.

(3) “Export” means any export from Norwegian customs territory 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) “Passage through” means the transport of products across Norwegian customs territory without transshipment, if both sender and recipient are located outside Norwegian customs territory.

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 Appendix I and Appendix 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;

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 through Norwegian customs territory, 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) exports by the Norwegian defence authorities, provided that the right of ownership to the products is not transferred and the products are to be used by Norwegian forces abroad. This exemption also applies to products that Norwegian defence authorities send out of the country for repair, maintenance, updating, and so on, and that are to be returned to Norway. Under these provisions, the defence authorities shall by 15 February each year send a report to the Ministry of Foreign Affairs on all exports such as are mentioned above that took place in the previous calendar year;
- i) defence-related products owned by a defence authority in a NATO or an EEA state and that are being returned abroad after temporary import to Norway in connection with 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 Appendix 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 shall be published 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;
- b) the recipient is an undertaking certified in accordance with section 13;
- c) the transfer is made for the purposes of demonstration, evaluation or exhibition;
- d) the transfer is made for the purposes of maintenance and repair, if the recipient is the originating supplier of the defence-related products.

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 Appendix 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 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

Chapter 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.

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

(Cover page only)

List I – defence-related products (2014 v.2)

This list corresponds to the Annex to Directive 2009/43/EC, most recently amended by Directive 2014/108/EU of 12 December 2014.

<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421228389435&uri=CELEX:32014L0108>

The EU's list of defence-related products 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.

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

(Cover page only)

List II – dual-use items (2014)

This list corresponds to Annex I to Council Regulation (EC) No 428/2009, most recently amended by Regulation No 1382/2014 of 22 October 2014.

http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_152996.pdf

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; 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.