

Decision (474/95) of the Council of Ministers on the General Guidelines for the Export and Transit of Defence Materiel

**Promulgated in Helsinki on 24 March 1995
Minister of Defence**

On the representation of the Ministry for Foreign Affairs, the Council of Ministers has decided, by virtue of Section 3, Subsection 2, in the Act on the Export and Transit of Defence Materiel as amended on 17 February 1995 (197/95):

Section 1

The following general guidelines shall be observed in the export and transit of defence materiel:

1. The Subject and Purpose of the Guidelines

1.1. These Guidelines concern products referred to in the Act on the Export and Transit of Defence Materiel (242/90, 197/95), in the subordinate Decree (409/95) and in the Decision of the Ministry of Defence (470/95) as well as the know-how, licences to manufacture, machines and equipment for manufacturing and computer software referred to in Section 1 of the Act.

1.2. When applicable, the Guidelines may also concern the firearms and ammunition of civil character referred to in the Act and Decree on Firearms and Ammunition.

1.3. The Ministry of Trade and Industry has issued regulations and publications containing guidelines and rules for the export and transit of such products (dual-use products), which can contribute to the development and production of weapons of mass destruction.

1.4. The purpose of the Guidelines is to give clarifying rules of application, from the foreign and security policy point of view, to the provision of principle in Section 3 of the Act according to which an authorization shall not be granted if it jeopardizes Finland's security or if it is contrary to Finland's foreign policy.

1.5. At the same time, these national foreign and security policy rules of application complement and make more precise the observance of the international agreements, commitments and obligations which concern Finland in exports of defence equipment.

1.6. The Annexes of these Guidelines shall be confirmed by a Decision of the Ministry for Foreign Affairs who is responsible for keeping the Annexes up-to-date with relevant international developments. The Annexes and amendments to them shall be published in the compilation of decisions of the Ministry for Foreign Affairs.

2. International Agreements, Commitments and Obligations

2.1. In deciding the authorization the following shall be observed:

2.1.1. the relevant international agreements (as listed in the Annex to this paragraph); [the following treaties which also concern exports of defence materiel have been listed in Annex:

- the Biological and Toxin Weapons Convention
- the Convention on Certain Conventional Weapons
- the Chemical Weapons Convention (ratified by Finland but not yet in force)]

2.1.2. the binding decisions of the UN Security Council on economic sanctions or arms export embargoes. The sanctions, embargoes and recommendations in force are listed in Annex to this paragraph. A decision on economic sanctions practically always includes an embargo against export of armaments;

[an up-to-date list of the countries concerned is in Annex]

2.1.3. arms export embargoes decided by the European Union as listed in Annex to this paragraph;

[an up-to-date list of the countries being embargoed by the EU, in addition to the UN decisions, is in Annex]

2.1.4. the relevant restrictions, when they are multilaterally binding, decided by the OSCE or other organizations in the security field or by multilateral export control arrangements.

2.2. In addition, in assessing the authorization it shall be taken into account the following internationally agreed arms export principles and criteria:

2.2.1. the EU common criteria for arms exports which are in Annex to this paragraph; [the present eight common criteria as approved by the European Council in 1991 and 1992 are in Annex]

2.2.2. the OSCE Principles Governing Conventional Arms Transfers which are in Annex to this paragraph;

[the Principles as approved by the Forum for Security Cooperation on 25 November 1993 are in Annex]

2.2.3. corresponding principles if multilaterally approved in other interGovernmental negotiating fore;

2.2.4. the guidelines approved or to be approved in such multilateral export control arrangements where Finland is a participant and which concern export of defence equipment.

3. Assessment of and decision on the authorization

3.1. Classification of defence equipment

3.1.1. In order to ease assessment of licence applications the defence materiel has been grouped, in the Decree (409/95), into four categories on account of their characteristics, intended use and military significance.

3.1.2. This classification is meant to be instrumental in assessment so that the first category is composed of lethal material intended for proper use in battle field; the second one is composed of weapon platforms; the third one is mainly composed of non-weapon platforms; and the fourth category is composed of ancillary equipment.

3.1.3. A separate category outside this classification is formed by the items referred to in Section 1, Subsection 2, of the Act and, when applicable, firearms and ammunition of civil character or being exported for civil use. The rules concerning the export of components are in Chapter 5.

3.2. Overall assessment

3.2.1. In subjecting licence applications to overall assessment also the following factors will be taken into account:

- foreign and security policy aspects, including the possible obstacles for export arising from Chapters 2.1. or 2.2.;
- analysis of the situation prevailing in the recipient country, especially with regard to human rights, including positions of other States vis-a-vis the recipient State;
- characteristics, intended use and military significance of the equipment;

- significance of the equipment and their exportation for the material preparedness of national defence and for the development of the domestic defence industry.

3.2.2. In problematic cases, restraint is to preferred.

3.2.3. If the items to be exported, on account of their characteristics and significance, will not lead or will, in all likelihood, not be used in violations of human rights, in offensive armed actions or for other comparable, unacceptable purposes in or outside the recipient country, their export may be recommended for a licence if the overall assessment is otherwise favourable and if the formal authorization requirements are fulfilled.

3.3. Cases where there are no obstacles for the export

3.3.1. No foreign and security policy obstacle for the export exist when the destination of the export is a country listed in Annex to this paragraph and if the conditions of that country do not give reason to other conclusions.

[According to Annex, this paragraph covers member States of the KU, of the European Economic Area (EEA), Switzerland, non-European member States of the OECD as well as the four Visegrad countries. All these States are or are about to be members in various multilateral export control arrangements which i.e. requires that they have a credible national export control system and a responsible export policy. The above paragraph is a statement of principle only. The information presented in the application documents will, of course, be duly assessed in each case concerning these countries.]

3.3.2. No obstacle exist either in cases when the export is related to the implementation of an agreement (MOW) in the area of defence materiel cooperation with the recipient State.

3.3.3. No obstacle exist if the items to be exported are intended for use in a peace-keeping operation or in crisis management implemented or authorized by the UN or the OSCE.

4. Treatment of licence application

4.1. By virtue of Section 4, Subsection 2, of the Act, the Ministry for Foreign Affairs is responsible for presenting the foreign and security policy aspects in relation to licence application or to prior inquiry.

4.2. Matters concerning the definition of defence materiel, prior encores and licence applications are treated in an interagency group established and chaired by the Ministry of Defence with the participation of other authorities concerned. The interagency group functions in collaboration with the Advisory Board on Export Controls established by the Ministry of Trade and Industry.

4.3. The purpose of the prior advice, as a response to inquiry, is to give the exporter an opinion on the foreign and security policy acceptability of the intended export before he decides enter into bidding or marketing. The prior advice given has to be taken into account later in the licence decision proper beside the other factors influencing the overall assessment.

4.4. After it has been established that there are no foreign and security policy obstacle to the export, it shall be assured, prior to the licence decision and on account of the assurances passed on to the Ministry of Defence, the following facts: the end-user, the end-use, and the arrival and non-diversion of the export (through a non-reexportation assurance and, afterwards, through an import verification).

5. Export of components

5.1. By virtue of Section 4, Subsection 3, of the Act the procedures concerning the assurances on end-use will be scaled according to what and how dominating the Finnish share and identity is in the assembled product. The extremes of that scale are made up, on the one hand, of an independent product manufactured and assembled wholly in Finland and, on the other hand, of a separate, integrated subsystem or individual components which will be used in the assembly of the final product in the recipient country.

5.2. A possible re-export of the subsystems or components mentioned above out of the country from which a Certificate on Use in Own Production has been obtained shall take place under the appropriate export controls of that country concerned.

5.3. Export of powder will be paralleled to export of components in cases when powder is intended for use as raw material for producing cartridges or ammunition.

5.4. The export policy followed by the country purchasing components will be taken into account in assessing the authorization.

5.5. In observing the principles of overall assessment pursuant to Chapter 3.2. the attitude will be differentiated according to what is the significance of the component in regard to the final product which it will be a part of.

6. Granting of a licence, revocation of a licence

6.1. When the licence matter concerns an export of defence materiel in the spirit of the Act and the Guidelines, the export being legitimate in foreign and security policy terms and subject to due controls, there will be a presumption to grant the licence or to give a favourable prior opinion if an obstacle to the recommendation cannot be presented.

6.2. There will be also a presumption to grant the licence if the new delivery corresponds to the previous export, is a continuation to that or otherwise connected to the previous one. The same applies to the deliveries of reserve parts or supplements to the export previously licenced.

6.3. A revocation of an authorization or a withdrawal of a licence, when cause therefor is found, as referred to in Section 6 of the Act, may take place on account of following reasons, for example: - an entering into force of a binding sanction, for example an arms embargo, established by an international organization referred to in Chapter 2.1. in regard to the recipient State and concerning such products which are covered by the licence; - a fundamental change in the situation of the recipient State, which can lead to a possibility that the defence materiel being exported from Finland under the licence will be used in violations of human rights or in offensive armed actions or for other comparable, unacceptable purposes; - when the exporter has made himself guilty of an export crime or an export violation referred to in Section 7 of the Act.

6.4. In considering a revocation or an withdrawal of a licence the supply engagements will be taken into account, including engagements on supplying service and reserve parts related to materiel deliveries concluded or going on.

Section 2

This decision shall enter into force on 1 April 1995.