

## **Insights to the Estonian Export Control System**

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### **1. Estonia and the international conventions and treaties in regard to non-proliferation**

#### **Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction**

Estonia signed the Chemical Weapons Convention on January 14, 1993 and the convention entered into force on June 25, 1999. Estonian Chemicals Notification Center acts as a National Authority. Estonia has annually and timely submitted the Article 3 declarations.

#### **Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (biological) and Toxin Weapons and on their Destruction.**

Estonia acceded to the Bacteriological (biological) and Toxin Weapons Convention on June 21, 1993, and has regularly submitted information as required by the confidence building measures, referred to in the Final Declaration of the Third Review Conference of the States Parties to the Convention of the BTWC.

#### **Treaty on the Non-Proliferation of Nuclear Weapons**

Estonia acceded to the NPT on January 31, 1992. On November 11, 1997 the Safeguards Agreement with IAEA entered into force. On April 13, 2000 Estonia signed IAEA's Additional Protocol of the Strengthened Safeguards System. Additional Protocol has not yet been ratified but the work towards its ratification and full implementation is ongoing. Estonian Radiation Protection Centre serves as a National Atomic Energy Authority in Estonia.

**Estonia is also a State Party to the following conventions:**

- **Convention on the Physical Protection of Nuclear Material**
- **Convention on Early Notification of a Nuclear Accident**
- **Convention on Assistance in the Case of a Nuclear Accident of Radiological Emergency**
- **Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management**

### **Comprehensive Nuclear Test-Ban Treaty**

Estonia ratified the treaty on June 21, 1999. On January 1, 2003 Estonia established National Data Center, to receive information from the International Data Center, at the Estonian Radiation Protection Center. Ministry of Foreign Affairs of Estonia acts as a National Authority.

### **International Code of Conduct Against Ballistic Missile Proliferation**

Estonia is the initial Subscribing State to the International Code of Conduct against Ballistic Missile Proliferation (ICOC).

## **2. Estonian export controls in making**

Estonian government in 1994 introduced an export control system based on the guidelines of AG, NSG, MTCR and former COCOM.

The Riigikogu (Estonian Parliament) adopted the Law on the Export and Transit of Strategic Goods on April 6, 1994.

- Besides the main act, a number of executive regulations were issued in the same year. Estonia's goal - EU membership - made it clear that complete rewriting of existing laws and regulations (which are compatible with EU regulations and the Code of Conduct on Arms Exports and international export control regimes principles) are required and therefore, a new law was adopted in July 1999.

## **3. The Legal Basis of Estonian Export, Import and Transit Controls**

The following provides the legal basis for the control of exports, imports and transit of strategic goods:

Main Act:

- Law concerning Import, Export and Transit of the Strategic Goods was adopted on June 16, 1999;

Executive Regulations:

- The Government Regulation No. 280, "On Statute of the Control Commission of Export, Import and Transit of Strategic Goods" was issued on September 28, 1999;

- The Government Regulation No. 281, “On Procedures of Export, Import and Transit of Strategic Goods” was issued on September 28, 1999;
- The Government Regulation No. 274, “On Establishment of Exceptions to Requirement of Import, Export or Transit Licences for Strategic Goods” was issued on September 22, 1999;
- The Government Order No. 154, “On Confirming the List of Strategic Goods” was issued on April 30, 2001.

The Regulations have been published in the official gazette and translated into English. The copies in English are available from the Estonian Ministry of Foreign Affairs Export Control Division, 1 Islandi square; 15049 Tallinn, Estonia. They are also available on the following Internet address [http://www.vm.ee/eng/kat\\_153/](http://www.vm.ee/eng/kat_153/)

#### **4. Licensing Authority**

An inter-ministerial Commission for Control of Export, Import and Transit of Strategic Goods (hereinafter - the Commission) has been set up by the Government. The Commission is chaired by the Minister of Foreign Affairs, and includes representatives of the Ministry of Defence, the Ministry of Economic Affairs, the Customs Board, The National Police Board and Security Police Board.

Applications for export, import and transit licences and international import certificates, end use certificates and delivery verification certificates for strategic goods are submitted to the Commission at the Ministry of Foreign Affairs.

*The main tasks of the Commission are as follows:*

- The Commission is responsible for issuing, changing, invalidating and the control of use of licences and certificates;
- The Commission is responsible for the enforcement of law and executive regulations concerning export controls and international agreements;
- The Commission is responsible for suggesting changes to the legal bases of the Estonian export control system and updating the export control policy, determining the list of goods subject to control, and every year the Ministry of Foreign Affairs compiles a control list with new nomenclature codes;
- Forwarding information regarding the fulfilment of international agreements and export controls in Estonia to the relevant international organisations;
- The Commission is responsible for developing the cooperation with international export control organisations.

*The address of the Commission is:*

Export Control Commission  
 Ministry for Foreign Affairs of the Republic of Estonia  
 External Economic Policy Department  
 1 Islandi square Tallinn 15049  
 ESTONIA  
 Tel: (+372) 6317 200, Fax: (+372) 6317 288

E-mail: [export.control@mfa.ee](mailto:export.control@mfa.ee)

## **5. Lists of Goods Subject to Export, Import and Transit Control**

The Law Concerning Control of Export, Import and Transit of Strategic Goods defines Strategic Goods as goods, materials, equipment, technologies, software and services that might be used for military purposes and could endanger international security and the security of the Republic of Estonia.

According to the Law of Export, Import and Transit of Strategic Goods, the Government determines the lists of goods subject to control, which contains two parts and is arranged as follows:

- Part I – ML category: weapons, ammunition and other military equipment (Wassenaar Agreement Munitions List).
- Part II - comprises all dual-use goods and technology covered by MTCR, NSG, Australia Group and the Dual-Use list of the Wassenaar Arrangement and is a translation into Estonian of the EU's dual-use list.

Dual-Use goods are divided into 10 categories:

Category 0 – Nuclear Materials, Related Systems, Equipment and Components

Category 1 – Materials, Chemicals, Microorganisms and Toxins

Category 2 – Materials Processing

Category 3 - Electronics

Category 4 - Computers

Category 5 – Telecommunications and Information Security

Category 6 – Sensors and Lasers

Category 7 – Navigation and Avionics

Category 8 - Marine

Category 9 – Propulsion Systems, Space Vehicles and Related Equipment

The export, import and transit control covers not only goods, but also technology and services. Thus, the permission of the Commission is required to export technology, all forms of technical information, and production rights for products included in the control list. This also applies to intangible transfers. In addition, the permission of the Commission is required for any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service of WMD or conventional arms, and may take forms such as instruction, training, transmission of working knowledge or skills or consulting services; "technical assistance" includes oral forms of assistance.

## 6. “Catch all” and brokering controls

Catch all and brokering have been defined through the list of strategic goods, which states that the goods are licencable if:

- The goods or their parts, which might be used in connection with the development, production, handling, operation, maintenance, testing, storage, detection, identification or dissemination of WMD or the development, production, maintenance or storage of missiles capable of delivering such weapons.
- The goods or their parts, which might be used in connection with military end-use. "Military end-use" shall mean:
  - incorporation into military items listed in the ML category of the control list;
  - use of production-, test- or analytical equipment and components therefore, for the development, production or maintenance of military items listed in the ML category of the control list;
  - use of any unfinished products in a plant for the production of military items listed in ML category of the control list.

In addition to above mentioned, if a possessor of goods or the principal has any information which gives reason to believe that the goods imported into Estonia, exported from Estonia or in transit are intended for use in the development or production of weapons of mass destruction or conventional weapons, the possessor or principal is required to inform the commission thereof, regardless of whether the goods are included in the list of strategic goods or not.

Control list defines the licensable brokerage activities as follows:

- Brokerage related to buying or selling of WMD or conventional arms related technology, know-how, knowledge or intellectual property rights;
- Brokerage related to buying, selling, promoting, advertising, marketing, transporting, handling, developing, producing, testing, maintaining or other services which are related to WMD or conventional arms and their parts.

Brokering controls are applicable when the service is provided:

- 1) from the territory of Estonia into the territory of a foreign;
- 2) in the territory of Estonia to a foreign service consumer;
- 3) by an Estonian service supplier who is a legal person, through the economic activities in the territory of a foreign state;
- 4) by an Estonian service supplier who is a natural person, while the Estonian service supplier is in the territory of a foreign state.

## 7. Types of Licences and Licensing Procedure

For every export, import or transit transaction of strategic goods an individual licence is required for all destinations. The licences and licensing procedure are the same for

military and dual-use goods, and there are no value or quantity thresholds. The Commission reviews every application on a “case by case” basis.

The Commission issues Export, Import and Transit Licences and International Import Certificates, End Use Certificates and Delivery Verification Certificates for the import, export or transit of strategic goods. Applications are submitted to the Commission at the Ministry of Foreign Affairs. Export, import and transit licences and import certificates are signed by the Chairman or his deputy. Licences and certificates are issued to companies registered in the Register of Enterprises of the Republic of Estonia.

*The following shall be submitted to the Commission by the company or person to obtain the licence:*

- application declaration on a standard form;
- registration certificate of the company or identification card of the person;
- special permit (licence) for several specified entrepreneurial activities (arms, dangerous chemicals, nuclear goods, etc.) if such permit is required by normative acts currently in force;
- documents providing the origin of goods;
- description of the goods - technical specifications; for chemical substances the international registration number of CAS (Chemical Abstracts Service);
- agreement or invoice (or a copy);
- International Import certificate and/or End-User statement of the importing country if required by the Commission.

The International Import Certificate (or an equivalent document) and End-Use Certificate etc., may be written in any language. If they are not written in Estonian, English, German or Russian language, an official translation shall be provided.

*The following certificates are issued by the Commission to verify that stated goods have been delivered and brought into Estonian Customs Territory:*

1) International Import Certificate is written on a standard form and authorised by the Commission. The importer certifies that he has undertaken to import to Estonia the stated goods up to the indicated value and amounts, and will not divert, re-export or trans-ship them to another destination except with prior authorisation of the Commission.

2) End-Use Certificate is written on a standard form and authorised by the Commission. The importing company undertakes to import to Estonia the stated goods to the indicated value and amounts, and will not divert, re-export or tranship the goods to another destination except with prior authorisation of the Commission. The importer certifies to use the stated goods only for the purposes indicated above and to furnish proof of importation to the exporter if such a request is made to the importer by the exporter or his government.

3) Delivery Verification Certificate is written on standard a form and authorised by the Commission. Delivery Verification Certificate verifies that the importer has produced evidence that the stated goods up to the indicated value and amounts have been brought into Estonian Customs Territory and received, and that the importer has undertaken not to

divert, re-export or trans-ship them to another destination except with the prior authorisation of the Commission.

The licences are issued after consulting the Ministry responsible for special permits. The corresponding Ministry shall confirm its consent or denial to issue the Licence. The Commission decisions are based on consensus.

*Validity of Certificates and Licences:*

- Licence of Import or Export is valid for up to 1 year.
- International Import Certificate Delivery Verification Certificate and End Use Certificate are valid for up to 6 months during, which they have to be presented to the licensing authority of exporting country.
- Transit Permission is valid for up to 1 month.

The Ministry of Foreign Affairs issues licences and other documents free of charge.

### **8. Deadlines of Licensing Process**

The Commission makes a decision concerning the issue or refusal to issue an import, export or transit license and notifies the applicant within thirty calendar days after the receipt of all documents necessary for apply for the license. If the information submitted to apply for an import, export or transit license needs further examination, the Commission may extend the period of applying for the license by thirty days, whereupon the Ministry of Foreign Affairs as the licensing authority informs the applicant immediately. Upon refusal to issue a license, the Commission has the right not to provide the license applicant with an explanation in case the decision is made on the basis of confidential information.

Usually the applicant receives an answer whether the license has been granted or refused within five working days. The Export Control Division of the Ministry of Foreign Affairs will immediately inform the applicant about the Commissions decisions by the means of contact the license applicant has provided to the licensing authority on their written license application (address, phone, fax and E-mail).

### **9. Sensitive Destinations and Export Restrictions**

Estonia does not maintain a specific “black list” of countries, but licences are not issued for transactions with countries under current embargoes and economic sanctions of the United Nations Security Council, Council of European Union or other international organisations to which Estonia is party to, or international sanctions established on the initiative of the Estonian Government on the basis of the International Sanctions Act or to entities that present unacceptable risk of diversion of controlled items.

*Commission will also not authorise the export or transit:*

- If the carriage of goods to the country concerned or end-user is in conflict with the international obligations of the Republic of Estonia;

- If there is a risk that the goods may be used in their country of destination to violate human rights or increase national or international instability or may be diverted from their intended destination or re-exported under undesirable conditions;
- If there is any possibility that the exported goods might be used for the production, use or development of chemical, bacteriological, nuclear or other weapons of mass destruction or the means of their delivery;
- If there is any possibility that the exported goods might be used to harm human rights or harms Estonia's national security or international security;
- If there is any possibility that the exported goods might endanger people's health or the environment.

It is forbidden to export goods that are subject to export control to areas where there is a war or the threat of war, or to countries where there is a civil war.

It is also forbidden to export or trans-ship antipersonnel mines to all destinations.

Estonian Government has decided (order no: 762-k) to adhere with **European Union Code of Conduct on Arms Exports** on 28. July 1998 and Estonian licensing authority is obliged to take arms exports authorisation decisions based on Code of Conduct.

## **10. Carriage of strategic goods across the customs frontier**

The importer or exporter presents the original license to the customs authorities in the course of customs clearance. A customs officer makes a notation concerning the actual quantity of the imported or exported goods on the original license, indicating the date of import and the number of the declaration of goods and confirms this information by his or her signature and personal stamp. If goods are imported or exported in several consignments based on one license, a customs officer verifies that the sum of quantities of the goods does not exceed the quantity specified on the license.

The customs officer returns the original license to the importer or exporter; however, the copy of the license should be kept by the customs authorities as an appendix to the first verified copy of the declaration of goods.

Customs transit procedure of strategic goods together with storage in a customs warehouse may take up to thirty calendar days. Keeping strategic goods in customs transit in the customs territory for longer than thirty calendar days should be co-ordinated with the Commission.

Customs Board accounts the transfers of strategic goods through the Estonian customs territory on the basis of import, export and transit licenses and forwards the corresponding information to the Commission.

## 11. Enforcement

The Customs Board, the National Police Board and the Security Police Board are responsible for export, import and transit control enforcement. In its work, the Customs and Police cooperate closely with the Export Control Division at the Ministry of Foreign Affairs (which is the licensing authority and also responsible for export control policy). All members of the Commission are linked into the common databases.

Major difficulty is that the Customs does not possess sufficient technical expertise taking into account that the detailed clearance is expensive and time consuming. Therefore, detailed control only takes place when there is reasonable suspicion. The matter is further complicated by the fact that dual-use goods are not always easily identified. Therefore the Commission has established a special help-line for customs.

If the customs officer decides to stop the movement of suspicious goods, he or she will use the special help-line and contact the export control authorities and if necessary submits all the related documentation and digital pictures of items electronically using customs intranet. In addition, the Commission can draw on the technical expertise of various Estonia's research establishments and international experts. After consultation with experts the customs officer can place the goods under customs custody. The goods can be placed under customs custody with no time limit.

Inspections of strategic goods take place at the customs level on an *ad hoc* basis, either at the request of the Commission or on the initiative of the customs authorities themselves. The goods, which are brought into Estonia under provisions of International Import Certificates or End-Use Certificates, are subject for random inspections. The Commission has the right to check whether the importer has not diverted, re-exported or trans-shipped the goods and whether the goods are used for purposes indicated by the end-user of the goods. Such inspections may also be made at the request of export control authorities of the exporting countries.

The Commission decides which companies need to be inspected and controls them at least once per two years. The Commission obtains a list of planned inspections throughout the year (20 inspections have been planned for the year 2003).

The Security Police Board handles the detection and investigation of violations of the export control regulations in the case weapons of mass destruction or related materials, equipment and technology are concerned.

The Police Board handles the investigation of criminal offences of dual-use goods and all cases related to civil weapons.

The Customs Board handles the detection and investigation of violations of the Strategic Goods Import, Export and Transit Act and Customs Code within its competence.

During the first 4 months of the year 2003

- 3 firms caught in violating the Export Control Act and convicted to pay fines;
- Criminal charges are pressed against 1 person.

## 12. Penalties

The Estonian Criminal Code provides penalties for violations of the export control regulations - imprisonment up to five years - and for contraband activity by a group of

persons organized for such purpose – imprisonment up to two to ten years. If the violation is committed by a legal person, it is punishable by a pecuniary punishment. The court shall also confiscate the substance or object, which was the direct object of an offence. Besides that a penalty of fines or imprisonment for up to two years may be imposed in accordance with the Estonian Criminal Code for providing the export control authorities with false information or forged documents.

The Estonian Customs Code provides penalties for the illegal transport of goods over the customs border or the use of goods transported over the customs border in violation of customs regulations - a fine equal to three times the value of the goods directly involved in the violation of the customs regulations. Military equipment, firearms and cold steels, explosives, radioactive, poisonous, narcotic, and psychotropic substances or other substances or objects requiring a special permit, which are seized by Customs due to the lack of a special permit, shall be confiscated and sold to an enterprise in possession of a corresponding permit, or shall be destroyed at the expense of the person who attempts to transport such items over the customs border.

A person who designs, manufactures, stores, acquires, hands over, sells or provides or offers for use in any other manner a chemical, biological or bacteriological weapon or any other internationally prohibited weapon of mass destruction or other weapon, or essential components thereof, shall be punished by 3 to 12 years' imprisonment. If the same act, if committed by a legal person, it is punishable by a pecuniary punishment or compulsory dissolution.

### **13. Culture of Compliance**

Essential prerequisite for an effective export control system is close co-operation between the industry and the government.

In order to foster culture of compliance the Ministry of Foreign Affairs organises annually export control related events (seminars, conferences, informative briefings etc.) The purpose of those activities is to help the industry and freight forwarders to identify the goods falling into problematic categories and guide them through the license application process, in order to avoid problems and major financial losses in the future.

During the past several years, the Export Control Commission also focused on the training of multinational logistics companies and freight forwarders. The Estonian Customs Board signed memorandums of understanding (MOU) with the companies in question, in which Customs takes the responsibility for training internal control specialists who would be able to identify the strategic goods. The companies assume responsibility for establishing the internal compliance programs. Training is carried out under Customs' basic training programme. In order to achieve the best results, the training is concentrated on classification and identification of controlled goods as well as on the basics of end-use and end-user based controls. When the catch-phrase for producers is "know your customer", then in the case of freight forwarders it is "know the goods that you are shipping".

Ministry of Foreign Affairs has set up a export control website on which has been posted the legislation, control lists, licence application forms, end-use statement forms, commodity classification form, inquiry form, red flag guidelines, lists of embargoed countries, FAQ, useful links, contacts, etc. Export Control Commission is also using the electronic communication systems in order to distribute “Export Control E-News” or forwarding the “Website Update Notifications”.

#### **14. Looking into the future**

Taking into account the newest developments in the respective area Estonian Ministry of Foreign Affairs is currently drafting a new export control law, which would *inter alia* abolish controls on dual use goods imports and introduce besides individual licences global and general authorisations, define more clearly brokering controls and establish brokering register.

The act concerning electronical signature has been adopted by the parliament on March 8<sup>th</sup>, 2000. The adoption of this legislative act opens new possibilities to the Estonian export control system. The legislation provides an opportunity to make licensing process completely electronic. The applications could be submitted electronically via Internet to the licensing authority and the Export Control Commission will issue electronic licenses directly to the customs WAN servers. Exporter, importer or principal will receive a reference number, which they will indicate in the process of customs clearance. Customs officer checks the validity of the license and enters to the correspondent file, how many items have been actually exported, imported or trans-shipped. The Commission hopes that such a system would be operational in the end of 2004.

In order to ensure that EU dual use regulation is properly applied particular attention needs to be paid to issues of information exchange and on regimes membership.