

RECENT DEVELOPMENTS IN THE FINNISH EXPORT CONTROL SYSTEM

1. New legislation on Arms Brokering introduced

While brokering has not been a problem in Finland so far the absence of controls was clearly a potential loophole that needed to be plugged.

Hence, provisions concerning arms brokering were included in the Act on the Export and Transit of defence Materiel and became law in December 2002 (Act on the Export and Transit of Defence Materiel 242/1990; as amended 900/2002)

It was a matter of priority for Finland to implement nationally the provisions of the UN Firearms Protocol, the OSCE Document on Small Arms and Light Weapons, and of course the UN Programme of Action. Our new legislation fully reflects the Common Position on arms brokering adopted by the EU last month.

The new legislation includes the following key elements:

Brokering controls cover all *defence materiel*. The concept of defence materiel is identical to the coverage of the Wassenaar Munitions' List as well as the EU Common List of Military Equipment, (with one exception). In Finland, *Civilian firearms and ammunition*, (i.e. hunting and sporting weapons and ammunition) are controlled under a different legislative framework.

The guiding principle is simple: the same controls apply to brokering as apply to export and transit of defence materiel. This means that each individual brokering transaction is subject to a brokering licence. The competent licensing authority is the Ministry of Defence.

The Ministry for Foreign Affairs is responsible for advising the Ministry of Defence on possible foreign and security policy implications of a brokering transaction, just as in the case export licensing. The licensing criteria are the same; we apply our national guidelines (which include the EU Code of Conduct on Arms Exports as well as the OSCE Guidelines), relevant international commitments and, of course, international arms embargoes, whether by the UN, the EU or the OSCE.

End-use controls are also the same. Finland applies a strict policy in this respect. An end-user certificate is a mandatory prerequisite for granting a brokering licence in all cases and to all destinations. Also the sanctions are the same. Penalties for violations range from fines to four years of imprisonment.

Definitions in the new legislation are mainly based on the deliberations within the EU and the Wassenaar Arrangement. *Brokering* is defined as “activities where the parties are brought in contact with each other with a view to concluding a contract involving export or transfer of defence materiel”. The *travaux préparatoires* of the Act describe brokering as “buying and selling, where the products enter into the legal possession of the broker” and/or “mediating without direct acquisition of property”. The *broker*, on the other hand, is defined as “a private person or a legal entity negotiating or arranging a contract that involves the export or transfer of defence materiel from a third country to another”. Third countries are understood to mean both EU Member States and other foreign countries.

The licensing requirement applies to brokering activities taking place on Finnish territory. In addition, there is an extraterritorial scope of application: if the brokering transaction takes place outside Finnish territory, the licensing requirement applies whenever the broker is a Finnish citizen, a Finnish legal entity or a Finnish resident.

The Ministry of Defence maintains a database of all licences granted. These licences are public documents in Finland, as are export and transit licences, and available for reading or photocopying at the MoD registry. The MoD publishes detailed statistics of all licences granted on an annual basis.

Finland is also planning to set up a register of arms brokers. The relevant legislation is under preparation. Legislation on arms brokering concerning civilian firearms and ammunition is also currently under preparation.

The Ministry of Interior (MOI) is also presently preparing the implementation of the UN Firearms Protocol. A motion to issue provisions on Arms Brokering concerning civil firearms and ammunitions is currently under preparation.

2. Export Control of Dual-use Goods

Some annexes of the Council Regulation (EC) No 1334/2000 were amended and updated in the beginning of this year implementing the changes agreed upon in international export control regimes. As the Council Regulation and its annexes *per se* automatically are binding legislation in Finland (like in any other member state of the European Union) no separate, additional amendments to the Finnish legislation were needed.

On 1 July 2003 the Finnish export control of dual-use goods underwent a noteworthy adjustment at the administrative and organisational level, when the human resources and decision-making powers of the Ministry of Trade (MTI) in this area were transferred to the Ministry for Foreign Affairs (MFA). However, the control of the nuclear specific items of the Dual-use Regulation still remain with the Energy Department of the MTI and the Radiation and Nuclear Safety Authority (STUK). The new Export Control Unit at the MFA is responsible for export control of dual-use goods and for the coordination of all matters related export licensing at the MFA. Administratively the new unit forms part of the Department of External Economic Relations at the MFA.

This adjustment was connected to a more comprehensive change aiming at the centralisation of all trade policy functions to one ministry (i.e. the MFA) in the state administration.

When considering applications for export of dual-use items the MFA seeks the advise of an intergovernmental body, the Advisory Board on Export Controls, which includes representatives of all relevant authorities involved in export control matters as well as the industry.

3. Enhanced enforcement

In recent years The Finnish Customs have taken a number of measures in order to enhance the enforcement of export control at the borders.

Common IT systems are being developed by Police, Customs and Frontier Guard authorities for intelligence and investigation purposes. Furthermore, the training program on export controls provided to Customs officers has been extended in order to take into account expected future developments and better meet future requirements. Application of risk analysis techniques and increased exchange of information at national and international level are key elements taught in the extended training program.

The Finnish Customs are also making substantial investments in order to enhance their technical capacity. An X-ray scanning facility for trucks and containers was taken into use by the Finnish Customs at the Finnish-Russian border in early 2000 and two mobile X-ray inspections devices for trucks and containers intended for use at the external borders will be acquired in 2004.

4. Outreach activities

As part of an intensified outreach effort the Finnish authorities involved in export control arranged a seminar in February 2003 in order to inform the Finnish industry about recent developments in international export control as well as developments and changes in the national export control system. The event was attended by more than 150 company representatives.

Finland is involved in ongoing outreach activities directed towards the Baltic countries together with the other Nordic Countries. The focus of these efforts is to promote a smooth transit for the new member states to the EU export control system. The activities include *inter alia* regular bilateral consultations between different authorities (MFA, MOD, MOI, Customs etc.) and targeted seminars.

In June 2002 Finnish authorities arranged a Border Management seminar for some Central Asian Countries (Kazakhstan, Kirgistan, Tajikistan, Turkmenistan and Uzbekistan). The program included a presentation of the border control system and border control cooperation as well as the Finnish customs system- both in theory and practise. The seminar was partly a follow-up the OSCE Workshops on Small Arms and light Weapons held in Central Asia in 2001 and 2002.

5. Legislation on Firearm Amnesty

A proposition concerning legislation on Firearm Amnesty is presently under preparation in Finland. The legislation is expected to come into force in the autumn 2003. It has been prepared by the Ministry of the Interior, the Ministry of Defence, the Ministry of Justice and the Ministry of Trade and Industry. The purpose of the project is to decrease the number of illegal and unregistered weapons in Finland and thereby increase public order and security.

There are in total around 1,5 million civilian-owned registered guns. In addition, the number of illegal (unregistered) small arms is estimated to be currently more than 40 000 in the possession of individual Finnish citizens (weapons mainly from the 2nd World War).

The Firearm Amnesty Project would make it possible to surrender illegal small arms, ammunition and explosives to the police without any punishment. This, however, would be possible only in the case where the small arm has not been used in criminal act.

An Owner of an illegal firearm could also apply for a licence to keep the gun. He or she could also donate or sell the firearm to another licence holder through the police within three months. Other possibilities are deactivation of the arm or its re-rendering to the state. The acquired firearms will be sold by the police in an official public auction on behalf of the owner to collectors and other licensed arms holders. The aim is to have all illegal firearms registered.