

282/2012

ACT ON THE EXPORT OF DEFENCE MATERIEL

Given in Helsinki on 8 June 2012

In accordance with the decision issued by the Parliament the following is enacted:

Chapter 1

General provisions

Section 1

Scope of application

This Act lays down provisions on the supervision and control procedure of the export, transfer, brokerage and transit of defence materiel.

Section 2

Restrictions to the scope of application

This Act does not apply if:

- 1) the Defence Forces, the Frontier Guard, the Police or anyone authorised by them exports or transfers, on a temporary basis, defence materiel which is the property of or managed by the Defence Forces, the Frontier Guard or the Police;
- 2) the Defence Forces, the Frontier Guard, the Police or anyone authorised by them exports or transfers defence materiel which has been imported, on a temporary basis, for an on-going project by the Defence Forces, the Frontier Guard or the Police;
- 3) said activities are based on an agreement (Finnish Treaty Series 65/1997) made between contracting states of the North Atlantic Treaty and other states in the Partnership for Peace on the status of their defence forces or on a crisis-management task of the European Union or of another actor, the defence forces of a foreign state export from Finland, transfer or transport via Finland's territory defence materiel which is the property of or managed by them;
- 4) the activity has been granted a permit under the Territorial Surveillance Act (755/2000).

Section 3

Defence materiel

A defence-related product referred to in this Act means the products defined on the Common Military List of the European Union (*common military list*) which are specially designed for military use and which are divided into 22 product categories, and the components, accessories, additional accessories, equipment and systems which are specially designed for these products.

Defence materiel also means the manufacturing know-how concerning and the right to manufacture defence materiel.

As to product category 1, this Act will apply only to weapons of the fully automatic type, precision rifles, smooth-bore weapons and weapons using caseless ammunition, which are designed specially for military use, and the components, accessories and equipment which are designed for these weapons.

As to product category 3 of the common military list, this Act apply only to weapons referred to in subsection 3;

- 1) ammunition of 12.7 mm calibre or above and their components;
- 2) ammunition of under 12.7 mm with armour piercing, incendiary and tracer characteristics and their components as well as other ammunition and their components which have been marked with military standards.

Section 4

Other relevant legislation and international obligations

The Act on the Control of Exports of Dual-Use Goods (562/1996) provides for controlling exports of dual-use goods.

The Firearms Act (1/1998) provides for the firearms, firearm components, cartridges and specially dangerous projectiles.

Furthermore, separate provisions issued and obligations determined in international treaties regarding the control of defence materiel shall be followed.

Chapter 2

Authorisation

Section 5

Exports

It is allowed to export defence materiel from Finland to outside the European economic area only when an export licence has been issued.

Section 6

Transfer

It is allowed to transfer defence materiel from Finland to the European economic area only when an export licence has been issued or published.

Section 7

Brokerage

To bring parties into contact with each other for the purpose of concluding an agreement to export defence materiel between countries outside the European economic area or to transfer defence materiel between countries belonging to the European economic area, a brokerage licence is required to engage in the brokerage of defence materiel within Finnish territory.

Finnish citizens, Finnish corporations and foreign citizens considered permanent residents of Finland under the Municipality of Residence Act (201/1994) are required to have a brokerage licence to engage in the brokerage of defence materiel outside Finnish territory.

Section 8

Transit

A transit licence is required to transport defence materiel via Finland if the exporter or the recipient or both are outside the European Economic Area.

Chapter 3

Requirements for issuing or revoking a licence

Section 9

General requirements for evaluating a licence application

The licence referred to in Chapter 2 will be issued or published only if it is in line with Finland's foreign and security policy and does not jeopardise Finland's security.

The issuance and publication of a licence is based on overall evaluation which takes into consideration the common position of the Council of the European Union defining common rules governing control of exports of military technology and equipment (2008/944/CFSP).

Further provisions on the general requirements referred to in subsections 1 and 2 may be given by government decree.

Section 10

Types of transfer licence

A transfer licence can be:

- 1) *a general transfer licence* which is published, with its conditions, as an open licence to a number of suppliers established in Finland to carry out transfers of defence materiel to a category or categories of recipients located in the European Economic Area;
- 2) *a global transfer licence* which is granted to carry out transfers of defence materiel to recipients in one or more Member States;
- 3) *an individual transfer licence* which is granted to carry out one transfer of defence materiel to one recipient in the European Economic Area.

Section 11

Requirements for publishing a global transfer licence

A global transfer licence may be published if:

- 1) the recipient of defence materiel is part of the defence forces of a Member State in the European Economic Area or a contracting authority in the field of defence, purchasing for the exclusive use by the defence forces in a Member State;
- 2) the recipient is a certified undertaking;

- 3) the transfer is made for the purposes of demonstration, evaluation or exhibition;
 - 4) the transfer is made for the purposes of maintenance and repair and the recipient is the originating supplier of the product;
 - 5) a general transfer licence is needed for an inter-governmental cooperation programme;
 - 6) a specific reason for a transfer exists, comparable to the ones given above.
- The situations for the use of the transfer licence, product coverage and other conditions shall be determined in the transfer licence.

Section 12

Requirements for granting a global transfer licence

If the supplier is evaluated to meet the general requirements laid down in this Chapter and a general transfer licence cannot be used, a global transfer licence can be granted to an individual supplier to carry out transfers of defence materiel to one or more recipients.

Section 13

Requirements for granting an individual transfer licence

An individual transfer licence may be granted on request if protecting Finland's key security interests, ensuring public order and security or respecting international responsibilities and obligations require that an individual licence be granted.

Section 14

Requirements for the applicant

The licence referred to in Chapter 2 may be granted to an applicant who is deemed suitable, on the basis of their activities or because of the matters that came up in connection with the licence application, to export, transfer, see to the transit or brokerage of defence materiel and who is believed to observe the provisions and orders pursuant to this act.

Section 15

End-user certificate

The applicant for a licence referred to in Chapter 2 may be required to issue an end-user statement regarding the defence materiel. A certificate by the end user is accepted as the required statement (*end user certification*).

If an item referred to in a licence application is meant for use only as a component in another item, the party using that item to manufacture a product must testify to such use in its capacity of end-user (*certificate on use in own production*).

Further provisions to ensure end use can be laid down by a Ministry of Defence decree.

Section 16

Validity of licence

An export, brokerage and transit licence as well as an individual transfer licence are granted for a specified period of time.

A global transfer licence is granted for a period of three years and it can be renewed.

A general transfer licence is valid until further notice unless it is revoked on special grounds.

Section 17

Revoking a licence

A licence may be revoked if:

- 1) there is a fundamental breach of licence conditions;
- 2) misleading information have been given on purpose when applying for a licence;
- 3) general conditions for granting a licence or the circumstances under which the licence was granted have fundamentally changed;
- 4) strong reasons exist for revoking the licence, comparable to the ones above.

A licence may be revoked or suspended.

Chapter 4

Procedure in licence matters

Section 18

Publishing a general transfer licence

The Ministry of Defence publishes general transfer licences.

General transfer licences are published on the website of the Ministry of Defence.

Section 19

Applying for a licence

Export licences, global transfer licences, individual transfer licences, transit licences and brokerage licences are applied for, in writing, by completing a form approved by the Ministry of Defence.

The following information shall be submitted in the application:

- 1) information on the applicant;
- 2) the recipient and end use of defence materiel;
- 3) countries of destination;
- 4) the quantity and value in euros of defence materiel;
- 5) validity period of the licence;

- 6) any additional information the Ministry of Defence may need in consideration of the application.

Section 20

Licensing authority

The government plenary session shall make a decision on export and transit licences if the item to be exported is included in categories 1–10 or 12 of the common military list as referred to in Section 3 and the exports are of considerable value or the foreign and security policy significance so require.

In situations other than those referred to in subsection 1 or if the defence materiel is to be exported on a temporary basis and the ownership will not be transferred abroad, the decision concerning export and transit licences shall be made by the Ministry of Defence.

The Ministry of Defence shall decide on the licence regarding the transfer and brokerage of defence materiel.

If necessary, the Ministry of Defence shall establish with the Ministry for Foreign Affairs that there is no foreign or security policy obstacle to granting a licence.

Section 21

Working Group for the exports of defence materiel

To deal with matters concerning the exports of defence materiel, the Ministry of Defence sets up a Working Group for the exports of defence materiel for a period of three years. The Working Group has representatives from the Ministry of Defence, the Ministry for Foreign Affairs, the Defence Command Finland, the Finnish Security Intelligence Service, the National Police Board and the National Board of Customs.

The Working Group is tasked to submit a statement to the Ministry of Defence on any licence application referred to in this act that has foreign and security policy significance and in matters requiring a definition of defence materiel and a preliminary request for comment.

Section 22

Definition of defence materiel

The Ministry of Defence shall decide for individual cases, on own initiative or on request, whether an item belongs to the categories referred to in Section 3 and, consequently, falls within the scope of this act. When requesting for a decision, the following information shall be given in writing:

- 1) information on the applicant;
- 2) description on the product;
- 3) any additional information the Ministry of Defence may need in consideration of the request.

Section 23

Preliminary statement

Before starting the licence proceedings, the Ministry of Defence shall provide a statement, on request, on whether the intended export, transfer, transit or brokerage of defence materiel meet the requirements referred to in Section 3.

A preliminary statement shall be requested in writing with the following information:

- 1) information on the applicant;
- 2) the recipient and end use of the defence item;
- 3) countries of destination;
- 4) the quantity and value in euros of the defence item;
- 5) any additional information the Ministry of Defence may have requested.

Chapter 5

Certificate of reliability

Section 24

Applying for a certificate

Pursuant to Section 10 on general transfer licences, a potential recipient of defence materiel shall establish their reliability by applying for a certificate from the Ministry of Defence.

The application shall be done in writing with information on the applicant, their activities in the field of defence and the internal transfer and export management systems with responsible leaders.

Section 25

Access to information by authorities

To be able to issue a certificate of reliability the Ministry of Defence is entitled to access, notwithstanding secrecy regulations:

- 1) information from the Finnish Security Intelligence Service or the Defence Command Finland regarding the Facility Security Clearance referred to in the Act on International Information Security Obligations (588/2004);
- 2) pursuant to the Firearms Act, a report from the National Police Board regarding the applicant's licences and their period of validity.

If the applicant does not have a valid Facility Security Clearance the Ministry of Defence may request, on the applicant's approval that a proceeding similar to the one referred to in the Act on International Information Security Obligations be initiated.

Section 26

Requirements for granting a certificate of reliability

On the basis of the information received in the application referred to in Section 24, the Facility Security Clearance referred to in Section 25 and the licences referred to in the Firearms Act, the Ministry of Defence evaluates the reliability of the applicant and their activities in the field of manufacturing, exports and import of defence materiel, personnel and other resources as well as the transfer and export management systems. The Ministry of Defence grants a certificate of reliability to an applicant who, on the basis of the above-mentioned information, is assessed to observe the provisions and orders regarding defence materiel.

Section 27

Validity of the certificate of reliability

The certificate shall be valid for a specified period of time which shall not, however, exceed five years.

The Ministry of Defence shall monitor at least every three years that the requirements are complied with. For this purpose the Ministry of Defence is entitled to have access to information referred to in Section 24, subsection 2 and in Sections 25, 33 and 35; and to inspect the premises where the information referred to in Section 33 are kept. Inspection shall not be carried out, however, in premises meant for permanent residence.

The undertaking that has been granted a certificate of reliability shall inform the Ministry of Defence of any changes in their activities which may influence the prerequisites for the certificate's validity.

Section 39 of the Administrative Procedure Act (434/2003) shall be applied to monitoring the prerequisites for granting a certificate.

Further provisions on monitoring the certificate's validity may be given by government decree.

Section 28

Publishing a certificate of reliability

The Ministry of Defence keeps an up-to-date list of the recipients of Finnish certificates of reliability and publishes the list in the central register maintained by the European Commission. The European Commission, the European Parliament and the countries belonging to the European Economic Area have access to the information through the central register.

Further provisions on the procedures of publishing certificates and updating the register may be given by government decree.

Section 29

Revoking certification

The Ministry of Defence may revoke certification if monitoring pursuant to Section 25 or otherwise uncovered information show that the recipient of a certificate does not meet the necessary prerequisites.

Certification may be revoked or suspended.

Section 30

Reciprocal recognition of certification

Certification granted in another country within the European Economic Area is considered valid in Finland.

Chapter 6

Registration

Section 31

Registration as the user of a general transfer licence

To be able to transfer defence items by a general transfer licence published by the Ministry of Defence it is necessary to become registered at the Ministry of Defence before using the general transfer licence for the first time.

The following information shall be given in the registration application:

- 1) information on the applicant;
- 2) the general transfer licence that the applicant intends to use;
- 3) any additional information that the Ministry of Defence may have requested.

The registration will be approved if, under subsection 2, the applicant is assessed capable of meeting the conditions of a general transfer licence and, pursuant to Section 14, is deemed suitable for transferring defence materiel.

Registration as a user of a general transfer licence shall be confirmed by a certificate issued by the Ministry of Defence.

Section 32

Revoking the approval of registration

The Ministry of Defence can revoke the approval of registration if:

- 1) there is a fundamental breach of the general transfer licence conditions;
- 1) misleading information has been given on purpose when applying for registration;
- 2) general prerequisites for approving the registration or the circumstances under which the registration was approved have fundamentally changed;
- 3) strong reasons, comparable to the ones above, exist for revoking the approval of registration.

The approval of registration may be revoked or suspended.

Chapter 7

Miscellaneous provisions

Section 33

Reports and accounts to be submitted to the Ministry of Defence

The supplier who has been granted an export, transfer, transit or brokerage licence shall submit a reliable report to the Ministry of Defence on the supply of items to the country of destination in accordance with licence conditions and a report every six months on the exported, transferred, transited or brokered defence materiel.

The supplier who has been granted a transfer licence and the user of a general transfer licence shall keep itemised and complete accounts of executed transfers. The Accounting Act (1336/1997) lays down the provisions on accounting.

The following information shall be given in the accounts:

- 1) exported of transferred defence materiel;
- 2) the quantity and value in euros of the defence materiel;
- 3) dates of the export or transfer;
- 4) the recipient;
- 5) end use and the end user if these are known;
- 6) a report on whether the information about possible restrictions to exports attached to the transfer licence were given to the recipient of defence materiel.

Further provisions on the reports and accounts to be submitted to the Ministry of Defence regarding transfers may be given by government decree.

Section 34

Monitoring by the Customs

The Customs monitors the exports, transfer and transit of defence materiel.

Section 35

Right of access to information

In addition to what was laid down in Section 25 on access to information, the Ministry of Defence, the Defence Forces, the Ministry for Foreign Affairs, the Ministry of the Interior, the Finnish Security Intelligence Service, the National Police Board and the National Board of Customs have, notwithstanding secrecy regulations otherwise binding on them, the right to provide each other with any such information about the applicant, product, end use and other elements of exports control referred to in this Act that the authorities need in order to carry out their control duties.

Section 36

Payments

A fee will be collected for the licence decision, certification and a Facility Security Clearance which may be required for certification, and registration. The Act on Criteria for Charges Payable to the State (150/1992) lays down the size of payments.

Section 37

Appeal

An administrative decision referred to in this Act may be challenged by an appeal as provided in the Administrative Judicial Procedure Act (586/1996).

The decision referred to in Sections 17, 29 and 32 of this Act must be complied with regardless of an appeal unless the authority dealing with the appeal otherwise orders.

Section 38

Penal provisions

Any person who on purpose or through negligence

1) fails to submit a report referred to in Section 33, subsection 1 or

2) violates the provisions on accounting referred to in Section 33, subsection 2 or 3

shall be fined for committing *an export violation of defence materiel*.

Penalties for committing an export violation of defence materiel are imposed in Chapter 46, section 11 of the Criminal Code (39/1886).

Chapter 8

Entry into force and transitional provisions

Section 39

Entry into force

This Act enters into force on 30 June 2012.

This Act repeals the Act on the Export and Transit of Defence Materiel (242/1990).

Section 40

Transitional provisions

The provisions of law in force at the time of the entry into force of this Act apply to licence applications that had become pending before the Act's entry into force.

The licences that were granted pursuant to the provisions of law in force at the time of the entry into force of this Act remain valid.

Measures required for the enforcement of this Act may be taken before its entry into force.