Voluntary national response to UN GA resolution 66/41

Norway

Norway basis her export controls on a seamless legislation encompassing military equipment, dual-use goods with catch all provisions and UN sanctions. Two control lists are maintained based on decisions in International Export Control Regimes in the English language as compiled by the European Union. The Norwegian legislation contains an Export Control Act, a corresponding regulation and guidelines for the decision making. Please find their translation below in respective Appendixes. Furthermore, the Governments annual report to Parliament (Stortinget)\(^1\) on exports of military goods plays an important role as review and recommendations by the politicians play directly into the guidelines mentioned above and actual practises.

Appendix 1

**Act of 18 December 1987 relating to control of the export of strategic goods, services, technology, etc.**

\(^1\) May be viewed in Norwegian at: http://www.regjeringen.no/pages/38126917/PDFS/STM20122013000080000DDDPDFS.pdf
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For this purpose the Ministry may conduct inspections and require access to recorded accounting information, accounting records, business documents and other documents that may be of importance. The Ministry may conduct inspections itself, or appoint experts to do so. In connection with such inspections the Ministry shall be given access to office or company premises and shall be provided with the necessary assistance and guidance. Appeals pursuant to sections 14 and 15 of the Public Administration Act do not have suspensive effect unless so decided by the subordinate instance or the appeals instance.

The duties set out in the first and second paragraphs apply notwithstanding any statutory duty of secrecy.

Subject to the exceptions that follow from the above provisions, every person has a duty of secrecy as regards information obtained under this Act. However, the duty of secrecy shall not prevent:

1. information from being used to achieve the purpose for which it was provided or obtained, for example in connection with the preparation of a case, a decision, the implementation of a decision, follow up or control,

2. the information from being accessible to other public officials within the agency or service to the extent that this is necessary to establish suitable work routines and archive systems, for instance for use as guidelines in other cases,

3. the administrative agency from furnishing other administrative agencies with information concerning an enterprise’s relationship to the agency and concerning decisions made when this is necessary to further the duties under this Act of the agency furnishing the information,

4. the administrative agency from reporting or providing information concerning breaches of the law to the prosecuting authority or to the supervisory authorities concerned if this is considered desirable in the public interest or if prosecuting the offence comes within the normal scope of the duties of the agency furnishing the information

5. the administrative agency from exchanging information (coordination) with another administrative agency as required by the Act relating to the reporting obligations of enterprises.

The Ministry may furthermore decide that public agencies in charge of tax assessment and control of value added tax shall be allowed access to information provided in accordance with this Act.

Sections 13 to 13e of the Public Administration Act do not apply.

§ 3
The Ministry may apply for the seizure of accounting records etc, such as mentioned in section 2, second paragraph. If there is reason to believe that such records exist, and if circumstances otherwise so indicate, the Ministry may apply for a search of offices and all other premises which are not a private residence.
An application for a search or seizure shall be addressed to the police. As regards further consideration of the application, the provisions of the Criminal Procedure Act apply insofar as they are appropriate. The person whom the application concerns shall have the rights of a party to the case in accordance with the provisions of the Criminal Procedure Act and, insofar as it is necessary for his activities, shall have access to the material seized. Nevertheless, this does not mean that he is to be regarded as charged with a criminal act. Section 204 of the Criminal Procedure Act applies correspondingly. Notwithstanding section 212, first paragraph, of the Criminal Procedure Act, the court will determine which documents etc. it is to examine.

§ 4
If the Ministry applies for search or seizure for the purpose of obtaining information on a matter with which the person concerned has been charged or for which he has been indicted, the application shall be dealt with as a separate matter in accordance with the provisions of section 3, second paragraph. The same applies if the Ministry applies to see documents etc. that are in the possession of the court or the prosecuting authority without a decision having been made as to whether they may be used in a criminal case. If the Court upholds the Ministry’s application, it may lay down as a condition that the information not be used in connection with the investigation of the criminal case until a final decision has been made as to whether the prosecuting authority may make use of it in the said case. If the prosecuting authority’s application is not upheld, the Ministry may not hand over the information or the documents to the prosecuting authority unless this is lawful under the provisions that otherwise apply to their duty of secrecy in respect of criminal acts.

§ 5
Unless the matter is subject to more severe penal provisions, any person who wilfully;

1. exports or attempts to export goods, technology or services in contravention of this Act or regulations issued pursuant thereto, or
2. contravenes or attempts to contravene any condition laid down pursuant to this Act, or
3. orally or in writing furnishes incorrect information concerning circumstances of significance for authorisation to export goods, technology or services if this information is furnished:
   a. in a declaration made for use by a public authority or anyone acting on behalf of a public authority in connection with export or an application for permission to export,
   b. in a declaration intended to enable another person to make such a declaration as is mentioned under litra a, or
4. in any other way contravenes or attempts to contravene provisions issued pursuant to this Act,

is liable to fines or a term of imprisonment not exceeding five years, or both.

Complicity in any offence such as is mentioned in the first paragraph is subject to the same penalty.
Any negligent contravention of the matters mentioned in the first paragraph, or complicity in such contravention, is punishable by fines or a term of imprisonment not exceeding two years.

§ 6

Repealed by Act 20. July 1991 nr. 66

§ 7

If an enterprise or person does not comply with the duty to provide information set out in section 2, the Ministry may order the payment of a continuous daily fine until this duty has been fulfilled.

The amount of the coercive fine to be paid is set taking into account how important it is to ensure compliance with the order.

An order to pay a coercive fine is enforced by execution proceedings.

The King will issue further regulations on imposing, calculating and remitting coercive fines.

§ 8

The Act enters into force immediately. The regulations relating to control of strategic exports issued pursuant to Provisional Act of 13 December 1946 No. 30 relating to Export Control, apply until further notice.

The Act is not applicable to permission granted prior to its entry into force. Services rendered and transfers of technology etc. effected after the entry into force of the Act nevertheless require permission in accordance with this Act even if they are related to permission which has previously been granted.
Appendix 2

Regulations amending the regulation related to the implementation of control of the export of strategic goods, services and technology

Laid down by the Ministry of Foreign Affairs on 4 July 2007 pursuant to the Act of 18 December 1987 No. 93 relating to control of the export of strategic goods, services, technology, etc., cf. Royal Decree of 18 December 1987 No. 967 on delegation of authority pursuant to the Act of 18 December 1987 No. 93 relating to control of the export of strategic goods, services, technology, etc.

§ 1

a. Permission from the Ministry of Foreign Affairs is required for the export of certain goods, specific technology, including intangible transfers of technology, technical data and production rights for goods, and certain services (licensing requirement). Permission is given in the form of an export licence either on the prescribed form or in the form of a letter, cf section 4. The licensing requirement also applies to the export of such goods from bonded warehouses.

b. The Ministry of Foreign Affairs will draw up lists of these goods and appurtenant technology. In cases of doubt, the Ministry will decide whether or not the goods or technology is subject to the licensing requirement. The Ministry may amend the lists.

c. The lists comprise the following:

   List I: Weapons, ammunition, other military materiel and appurtenant technology.
   List II: Strategic goods and appurtenant technology not included in List I.

d. Permission from the Ministry of Foreign Affairs is required for services connected with goods and technology included in Lists I and II, and any other services, provided abroad or in Norway for use abroad, that may directly serve to develop a country’s military capability.

e. The Ministry of Foreign Affairs may require end-user declarations in connection with the export of goods and technology included in Lists I and II, or any services provided in connection with such goods or technology.

f. Notwithstanding the Ministry of Foreign Affairs’ lists, a licence is required for export of any goods, technology or service for military purposes to areas where there is a war or the threat of war, or to countries where there is a civil war.

g. Notwithstanding the Ministry of Foreign Affairs’ lists, a licence is required for export of any goods, technology or service in cases where the exporter knows that or has reason to believe that such goods, 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. Corresponding provisions apply in connection with the development, production, maintenance or storage of missiles that can deliver such weapons.

h. Notwithstanding the Ministry of Foreign Affairs’ lists, a licence is required for export of any goods, technology or service for military use to areas that are subject to an arms embargo adopted by the UN Security Council pursuant to Chapter VII of the Charter of the United Nations.

i. Trading in, negotiating or otherwise assisting in the sale of military goods and technology included in List I from the Ministry of Foreign Affairs from one foreign country to another is not permitted without a license from the Ministry. Corresponding provisions apply in connection with negotiations for goods included on List II, and for appurtenant technology or services if it is known or there is reason to believe that such goods, 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.

§ 2

An export licence will not be granted on the basis of considerations such as the fact that binding agreements have been entered into or that payment has been received. Sales of goods for which a licence is required to other countries should always include a proviso stating that the sale is subject to a successful application for an export licence.

§ 3

The following are exempted from the licensing requirement in section 1:

a. goods that are returned to a foreign owner after temporary import to Norway for exhibition or demonstration. This exception does not apply to goods in List I,

b. rescue equipment and oil response equipment exported in connection with rescue operations,

c. firearms, parts of firearms and ammunition exported in accordance with part VI of the Regulations of 25 January 1963 No. 9722 relating to firearms, weapon parts and ammunition,

d. goods 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. goods that are solely destined for transport across Norwegian customs territory, if both sender and recipient are outside Norwegian customs territory. This exception does not apply to goods in List I,
f. goods, technology and services for the use of the Norwegian population or Norwegian enterprises on Svalbard and Jan Mayen,

g. goods, services and technology for use on the Norwegian continental shelf,

h. goods, services and technology for use on board Norwegian-owned ships sailing under the Norwegian flag or Norwegian-owned aircraft engaged in international trade,

i. exports by the Norwegian defence authorities, provided that the right of ownership to the goods is not transferred and the goods are to be used by Norwegian forces abroad or the recipient is a defence authority in a NATO or EU member state. This exemption also applies to goods that Norwegian defence authorities send out of the country for repair, maintenance, updating, and so on, and that are to be returned to Norway. Pursuant to 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,

j. Military material included in List I that is owned by a defence authority in a NATO or EU member state and that is being returned abroad after temporary import to Norway in connection with an exercise or training.

§ 4

Permission from the Ministry of Foreign Affairs for the export of goods subject to the licensing requirement under section 1 of these regulations is given in the form of an export licence on submission of an application on the prescribed application form. Applications and licences may be transmitted electronically.

Applications for permission to export such technology or services such as are mentioned in section 1 are to be submitted in the form of a letter. A licence will also be issued in the form of a letter.

Applications to engage in negotiations on the sale of technology or services such as are mentioned in section 1, subsection i, are to be submitted in the form of a letter. A licence will also be issued in the form of a letter.

The exporter is obliged to furnish any information or documentation the Ministry of Foreign Affairs deems necessary for the processing of the application.

The application shall be signed by the exporter or by any person authorised to act on the exporter’s behalf.

§ 5

An export licence for goods and technology, or for the provision of services, may not be transferred to another person without the permission of the Ministry of Foreign Affairs.

§ 6
The exporter shall ensure:
- that goods, technology and services exported are in accordance with the licence granted,
- that goods, technology and services exported are delivered to the destination stated in the licence,
- that the quantity or description of goods, technology or services exported does not deviate from the quantity or description stated in the export licence,
- that the export is effected within the period for which the export licence is stated to be valid,
- that any special conditions set out in the export licence have been met.

§ 7

A valid export licence from the Ministry of Foreign Affairs shall be obtained before the export of goods to which the licensing requirement applies. The exporter shall ensure that the export is in accordance with the valid export licence, see section 6. The Ministry of Foreign Affairs or the customs authorities may order the exporter to produce documentation of any consignment exported any licence issued pursuant to these regulations for control purposes.

§ 8

Applications for an extension of the period for which a licence is valid shall be sent to the Ministry of Foreign Affairs accompanied by a statement explaining the reasons for the application. The same applies to applications for an alteration to a licence. An application shall be submitted in the form of a letter. Applications and licences may also be transmitted electronically.

An export licence may only be altered by the Ministry of Foreign Affairs.

§ 9

If a licence that has been granted is not used, or cannot be used in accordance with the conditions specified in it, the licence shall immediately be returned to the Ministry of Foreign Affairs accompanied by a statement explaining why it cannot be used.

§ 10

The exporter or the person authorised to act on the exporter’s behalf shall notify the Ministry of Foreign Affairs immediately in the event that a valid licence is lost.

§ 11

The exporter (licence holder) shall retain the used licence for ten years after the expiry date of the licence. The Ministry of Foreign Affairs may require the exporter to produce the licence for control purposes.
§ 12

Conditions may be set for the granting of a licence. These conditions shall be compatible with the purpose of the Act of 18 December 1987 relating to control of the export of strategic goods, services, technology, etc.

§ 13

A licence granted pursuant to these regulations may be revoked if the exporter to a considerable extent misuses the licence or to a considerable extent fails to fulfil the terms specified therein. A licence may also be revoked if new information or changes in the facts become known, or the political situation in the recipient state or area changes, and this significantly alters the basis on which permission was granted. The general rules concerning the reversal of individual decisions also apply.

§ 14

The Ministry of Foreign Affairs may grant exemptions from these regulations.

§ 15

These regulations enter into force on 15 February 1989.
Appendix 3

Guidelines of 28 February 1992 for the Ministry of Foreign Affairs when dealing with applications concerning the export of weapons and military materiel, as well as technology and services for military purposes

I. Purpose and scope

1. These guidelines apply to the procedures to be followed by the Ministry of Foreign Affairs when dealing with applications for exporting arms and military equipment, as well as technology and services which may be used for military purposes.

The licensing rules do not apply to the export of insignificant quantities of goods which are not intended for military or police use.

The export control system is based on the following excerpts from the Government's statement of 11 March 1959 and the Storting's decision of the same date:

The Government's statement:

"In making the decision, importance shall be attached to foreign and domestic policy assessments, and the primary consideration should be that Norway will not permit the sale of arms or munitions to areas where there is a war or the threat of war, or to countries where there is a civil war."

The Storting's decision:

"The Storting takes note of the statement made by the Prime Minister on behalf of the Government. The Storting declares most emphatically that arms and munitions may be exported from Norway only after a careful assessment of the foreign and domestic policy situation in the area in question. In the Storting's opinion, this assessment must be conclusive of the question whether such goods are to be exported."

In 1997, the Storting unanimously endorsed a clarification made stating that “an assessment by the Ministry of Foreign Affairs should include consideration of a

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2 Drawn up pursuant to Act No. 93 of 18 December 1987 relating to control of the export of strategic goods, services, technology, etc., and Regulations No. 51 of 10 January 1989 relating to the implementation of control of the export of strategic goods, services and technology, laid down by the Ministry of Foreign Affairs.
The Government considers the Storting’s decision to be mandatory, and the export control system shall ensure that it is complied with.

2. As regards implementation of the export control system, Act No. 93 of 18 December 1987 relating to control of the export of strategic goods, services, technology, etc. (hereinafter referred to as the Export Control Act), and Regulations No. 51 of 10 January 1989 relating to the implementation of control of the export of strategic goods, services and technology (hereinafter referred to as the Regulations) are applicable.

These guidelines are intended to be advisory and establish the principles the Ministry of Foreign Affairs are to apply when dealing with arms export matters pursuant to the Export Control Act and the Regulations. Any consideration of applications for an export licence in terms of section 1 of the Regulations shall be based on these guidelines, and reference shall be made to List I in the Ministry of Foreign Affairs' Official Notification on Export Control (Weapons, ammunition and other military equipment).

3. Owing to the advances in military technology since 1959, the considerations underlying the Government's statement and the Storting's decision can only be pursued by means of an export control system which extends beyond what is directly implied by the wording of the statement and the decision. These guidelines are intended to ensure that this is the case. Thus, they apply to the consideration of applications for export licences not only for arms and munitions, but also for other equipment designed or modified for military purposes (see chap. V below), for parts and components (see chap. VII), and for technology and services (see chap. VI and VIII, respectively).

4. When dealing with licence applications, it is essential to bear in mind that in many cases the licensing obligation may exceed the power conferred by section 1 of the Export Control Act to prohibit export. Thus, before refusing a licence application, it must be substantiated that the statutory conditions have been fulfilled. It is particularly important that such an assessment of the statutory power be made when dealing with licence applications for the export of goods of limited military significance, the export of parts and components, and the export of technology and services.

II. Groups of countries and categories of goods

1. In order to facilitate the processing of licence applications, the following groups of countries are to be used:
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**Group 1** comprises the Nordic countries and member countries of NATO. The group also includes other countries which may be approved by the Ministry as recipients of weapons.

**Group 2** comprises countries located in an area where there is a war or the threat of war, countries where there is a civil war, countries to which, on the basis of a careful assessment of the foreign and domestic policy situation in the area, it is inadvisable to export arms and military equipment, or countries affected by a sanction adopted by the UN Security Council.

**Group 3** comprises countries which do not belong to group 1 or 2 to which Norway does not sell weapons and ammunition, but which may receive other equipment that is designed or modified for military purposes.

2. The following categories of goods are to be introduced:

**Category A:** Weapons, ammunition and certain types of military equipment

This category includes all kinds of weapons and ammunition.

It also includes other equipment that could be used effectively to influence the military balance of power beyond the immediate vicinity, including equipment for maritime surveillance and electronic measures against satellite-borne systems.

**Category B:** Other equipment designed or modified for military purposes.

This category includes other equipment designed or modified for military purposes which is specified in List I in the Ministry of Foreign Affairs’ Official Notification on Export Control (Weapons, ammunition and other military equipment) which does not have such properties or areas of application as specified for category A.

**III. Cooperation and development projects**

The export of goods, services and technology to countries with which Norway has concluded cooperation agreements shall be permitted if such export is effected in connection with a project that has been approved by the Norwegian authorities and whose primary objective is to safeguard the defence needs of the country in question. If the finished product is not designated as Norwegian, it may be re-exported in accordance with the export control rules of the country in question.

**IV. Multinational products**

In cooperative projects which are of such a nature that the identity of the finished product appears to be multinational, the export control rules of the country of production can be applied to exports to third countries. In connection with the
approval of the cooperative project, the conditions for the export of the finished product to a third country will be agreed by the authorities of the countries involved.

V. The export of goods having independent functions

1. Export licence applications are to be dealt with regardless of whether the goods are to be exported directly or indirectly to the recipient country.

2. Products in category A may not be exported to any end-users other than government authorities. The primary consideration should be that products belonging to category A or category B may not be exported to countries in group 2.

3. 
   a) An export licence will normally be granted for the export of goods in category A if the customer is, or is acting on behalf of, the defence authorities of a country belonging to group 1. This must be substantiated by documentation. A licence to export goods in this category to countries other than those belonging to group 1 must be dealt with by the Government and the granting of such a licence requires that an officially confirmed end-user statement containing a re-export clause be submitted, i.e. a statement to the effect that re-export must not take place without the approval of the Norwegian authorities.

   b) A licence to export goods in category B to countries in groups 1 and 3 shall be granted. Documentation substantiating the end-user shall be required.

VI. The export of technology, including production rights and all forms of technical information

1. For the purpose of these guidelines, technology means insight enabling one to develop, produce, maintain or use goods. The transfer of production rights is the most common form of technology export from Norway.

2. Applications for transferring production rights shall be dealt with in such a way as to ensure that the purpose of the transfer is not to circumvent Norwegian export controls.

3. Permission to export technology in accordance with cooperation agreements with enterprises or the authorities of other countries shall be granted after the agreement has been approved by the Norwegian authorities.
4. When dealing with applications for exports which are not part of an officially approved process of cooperation, the category to which the finished product will belong shall be ascertained.

   a) If it is a matter of production rights for goods in category A, permission may only be granted for transfers to countries belonging to group 1 and in accordance with principles corresponding to those which otherwise apply to the export of goods in this category.

      The permission is subject to the condition that the Norwegian seller of the production rights is also required to incorporate into the terms of the contract a reservation to the effect that any sublicensing of production rights will be submitted to the Norwegian authorities for approval. The Ministry of Foreign Affairs shall deal with applications for sublicensing in the same way as direct transfers of production rights from Norway.

   b) Permission will generally be granted to transfer production rights for goods in category B to countries in groups 1 and 3. In such cases, the Ministry of Foreign Affairs' requirements as to documentation and terms of contract must depend on a concrete assessment in which account is taken of the properties of the product, the export policy of the country of production, and any detrimental effects should the product be exported to an undesirable recipient.

5. Detailed guidelines may not be drawn up for other types of technology transfers. The assessment of the export licence application will depend on the degree to which the transfer of technology is connected with a product's military function. The more this is so, the more important it is to base the assessment of an application on the guidelines for the export of finished products in a corresponding category.

   VII. The export of parts and components

1. For the purpose of these guidelines, the export of parts and components means the export of goods which have no independent function.

2. When parts and components are exported in accordance with cooperation agreements with enterprises or the authorities of another country, an export licence shall be granted when the agreement has been approved by the Norwegian authorities. It is then a prerequisite that the Norwegian parts or components be coordinated with parts from other sources of supply, and that the finished product not be designated as Norwegian.

   In such cases, the documentation substantiating the end-use of the finished product may be dispensed with.

3. As regards the export of parts and components for projects which have not been approved officially and where the export is based on technology available on the
market and on the basis of the customer's product specification, a licence shall
generally be granted to countries which do not belong to group 2 if the finished
product is not designated as Norwegian. Documentation concerning the end-use of
the finished product shall not be required.

4. An application for a licence to export parts or components of a type other than that
mentioned in clauses 2 and 3 shall be dealt with in the same way as in the case of the
export of the finished product. However, a departure from this rule may be
authorized by the provision in chap. I, clause 1.

VIII. Provision of services

1. In order for permission to be required pursuant to section 1, litra e and g, of the
Regulations, the provision of services may, but does not necessarily have to be,
connected with the development, production, maintenance or use of a product. This
also applies to military planning.

2. As regards the provision of services connected with military equipment belonging to
categories A and B, and which are essential to the development, production,
maintenance or use of such equipment, permission for providing such services shall
be granted on the basis of conditions corresponding to those applicable to an export
licence for the product itself. If the service is more remotely connected with the
product, a less stringent practice may be considered.

3. As regards services that are not specifically connected with particular goods, but that
concern military planning, permission shall generally be granted to countries in
group 1 but not to countries in group 2. The granting of licences to other countries
must be considered in each individual case on the basis of the anticipated military
and any possible political effects, and must be approved by the Ministry.

IX. Procedures

1. The Ministry of Foreign Affairs should make a final decision on applications dealt
with according to these guidelines at the latest within twelve weeks in the case of
products in category A, and at the latest within six weeks in the case of other
applications.

2. If necessary when assessing technical aspects and areas of application for products,
technology, technical information or services, the Ministry of Defence as represented
by the Norwegian Defence Research Establishment may be consulted.

3. If an export licence application concerns important defence matters or cooperation
with other countries concerning equipment, the opinion of the Ministry of Defence
shall be obtained.
4. If an export application concerns important Norwegian commercial interests, the opinion of the Ministry of Trade shall be obtained.