Estonian Export Control System

1. General overview
Estonian export control system has been effective since 1994, today close to 20 years of experience. Estonian export control system is effective and quite unique because it combines dual-use goods, military goods and torture goods control into one legislation and under one government authority.

Estonia is member of three export control regimes: Wassenaar Arrangement (WA) since 2004, Nuclear Suppliers Group (NSG) since 2005 and Australia Group (AG) since 2004. Estonia also implements Missle Technology Control Regime (MTCR) controls, but is not a member of that regime, though has been candidate since 2004. Regimes work on guidelines and procedures on arms transfers, as well as on dual-use goods and technologies. Member countries, including Estonia, follow those measures in accordance with their national legislation and policies.

Estonia is also a party to Non-Proliferation Treaty; Proliferation Security Initiative; International Code of Conduct against Ballistic Missile Proliferation - Hague Code of Conduct; Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.

Estonia is a member of European Union (EU) hence follows the European Union various regulations. European Union regulates dual-use goods and torture goods policy. Concerning military goods, the EU has laid down common positions on certain principles, but the details and implementation are the matter for member states national policy.

2. Legislation
In Estonia a more accurate term „Strategic Goods Control“ is used instead of Export Control. This term includes military goods, dual-use goods, torture goods and adds import, transit and provision of services to export control.

The export control system in Estonia is currently acting under its fourth amended export control legislation. Strategic Goods Act, enforce from January, 2012, lays dawn rules and procedures for export control in accordance with national and international obligations. It is a single act that covers military goods, dual-use goods and torture goods.

Strategic Goods Act set the basic principles of control: definitions, types of authorizations and how to get them, prohibitions, the responsible authority and its competence, notification mechanism, liabilities and supervision. The Strategic Goods Act is translated into English and can be found here: http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=2012X07K1&keel=en&pg=1&tyyp=RT&tyyp=X&query=strateegilise+kauba+seadus

Strategic Goods Act has 6 administrative acts that set the statutes of the export control authority; adopt lists of strategic goods; set customs formalities; form general licenses; provide forms for applications and licenses and put in place a database for all cases overview.

In cases of infringements, penalties are covered by the Penal Code. Penalties are fine or imprisonment up 10 years. The investigations are lead by the Customs and Tax Board and Security Police Board. Estonia fully enforces all UN, EU and OSCE embargoes and sanctions according to International Sanctions Act.

3. The competent authorities
The Strategic Goods Commission is a strategic goods licensing and supervising authority at the Ministry of Foreign Affairs. It includes the representatives of the Ministry of Foreign Affairs, the Ministry of Defense, the Ministry of Economic Affairs and Communications,
the Security Police Board, the Police and Border Guard Board, as well as the Tax and Customs Board. The Commission is lead by the Minister of Foreign Affairs. The secretariat of the Commission is also at the Ministry of Foreign Affairs.

The Commission discusses and decides all applications and other relevant issues. To accelerate and ease the licensing burden the Commission uses electronic processing program. Decisions are consensus based, in exceptional cases voting based. The Commission submits annual activity report to the Government. The Commission is also responsible for international cooperation in the field of export control.

4. Controlled Goods and transfers

a. Military Goods

Military goods are products that are designed for military purposes, so called single use products. The list of military goods, that Estonia uses, comes from WA munitions list, which is incorporated into EU Common Military goods list. It has 22 categories of military goods, their components and related equipment: small caliber firearms, large caliber firearms, ammunition, explosive devices, fire control and warning equipment, ground vehicles, chemical and biological agents, explosive substances, war vessels, aircraft and UAV´s, electronic equipment, high velocity kinetic energy weapon systems, protection equipment, training equipment, imaging and countermeasure equipment, unfinished products of previous categories, miscellaneous equipment, production equipment, directed energy weapon systems, cryogenic and superconductive equipment, software and technology. Estonia has added two categories of its own into the military goods list for internal security reasons.

Estonia controls military goods import, export, transit and provision of services (brokering and technical assistance) across Estonian national border. The control principle is that an authorization for listed military goods transfer is necessary for every transaction. Brokering of military goods means the acquisition of military goods located in a foreign country with a view to transfer the goods to another foreign country.

Under Strategic Goods Act so called catch-all principle exists, meaning even non-listed goods might be controlled on ad-hoc basis when they have the characteristics of strategic goods in connection with their end-use or end-user. Control in that case means that the company will be informed that license for this specific type of transaction will be obligatory and will have to apply for it.

b. Dual-use goods

Dual-use goods are controlled because of weapons of mass destruction concerns. These are goods that have two uses: military (weapons programs) and civilian (e.g. industrial) uses. These goods control lists are compiled from WA, AG, NSG and MTCR products lists. Dual-use goods list is very technical and consists of 9 categories: nuclear materials, facilities and equipment, special materials and related equipment, materials processing, electronics, computers, telecommunications and “information security”, sensors and lasers, navigation and avionics, marine, aerospace and propulsion.

Dual-use goods list consists of two lists, one is the main list and there is also a very sensitive products list. Dual-use goods are controlled when exported outside the EU. Import of those goods is not subject to control in Estonia. Also brokering above EU and transit through EU will be controlled when WMD end-use suspicions exist. EU internal trade needs license only in cases where the products are enlisted in very sensitive dual-use goods list.

Catch-all principle exists, meaning that even non-listed goods might be controlled on ad-hoc basis when there are WMD suspicions. Control means that these non-listed goods are licensed when exported, transited or brokered outside EU border.
c. Torture Goods
There are two types of torture goods. First, goods that have no other practical use besides torture, like guillotines, electric chairs for execution, automatic drug injection systems etc. Those goods are not allowed to be imported into or exported from the EU for no other purposes than for a museum exhibit. Secondly, goods that might be used for torture, cruel, inhuman or degrading treatment or punishment, like restraint chairs, leg-irons, thumb-cuffs, portable electric shock devices etc. For those goods, export authorization is necessary for every export outside EU. These goods are controlled because of anti-torture policy.

5. Authorizations
a. Licenses
Three types of licenses are available: individual, global and general licenses. Individual license is most commonly used and it is meant for one transaction (can be multiple shipments) between two specified parties. Validity can be up to one year. Global license involves more than one party. For example there can be one exporter and several different end-users or vice versa. The validity of the license is up to three years.

General license is simplified authorization type which is used in low sensitive cases. It differs from the previous two, because it is already issued by the authorities with a set of destination countries, conditions and requirements. Companies will register themselves to have the right to use that license. Registered companies are free to export if they fulfill the general license requirements and conditions to allowed destination countries without quantity or value limits. General license is valid without deadline until withdrawal by the authorities.

b. Registrations
Registrations are additional measures provided either to facilitate or toughen the licensing measures. There are three types of registrations. First - military goods brokers need to be registered by the Strategic Goods Commission before any transactions. This is an added control measure because brokered products do not cross Estonian national border which makes it difficult to control. Individual licenses are required for every transaction after registration. The entities not registered do not have a right to broker military goods.

Secondly - all general license users have to be registered to become eligible for simplified controls. The companies that do not register can still apply individual licenses to continue their business.

The third measure is certification. This is an additional measure that will prove the entity’s trustworthiness in the field of export control. With this, the company proves that they have efficient and working export control measures within the company. It is the highest acknowledgment for a company. Certification is a condition for receiving a general license of military goods as well. It can also be used as a voluntary measure for a company in order to enable him to use simplified procedures, if available.

c. End-use control Documents
End-user documentation contains three types of certificates:
- International Import Certificate - that includes the confirmation of the Commission that the owner of the goods shall undertake to import the goods in the indicated value and quantity to Estonia and not re-export without an appropriate special authorization;
- End-User Certificate - that includes the end-user confirmation of the commitment to import the goods in the indicated value and quantity to Estonia, use the goods only for indicated purposes and not to re-address the goods without a written consent of the Commission, not to re-export the goods again without an
appropriate authorization, and the confirmation of the Commission that the control over the use of the goods shall be ensured in Estonia;

- Delivery Verification Certificate - which includes the confirmation of the Commission that the recipient of the goods has received the goods in the indicated value and quantity in Estonia.

These are not obligatory documents in every transaction, but issued on demand.

6. Procedures and decision making

A company has to submit an application to get a license, end-use control document or be registered. When applying, company submits additional documents (contracts, invoices, end-use/end-user confirmations etc.) to prove that transactions. The Commission can ask for additional information when necessary.

The Strategic Goods Commission has 30 working days to decide on an application. However, in most cases, the decisions are made in first two weeks. In certain circumstances consultations with other states might be necessary. The processing period of 30 working days, can be extended if necessary.

In decision making many aspects of the case are taken account: the parties involved, products, stated end-use, end-user country situation and the overall plausibility of the case. Every license application requires an thorough research to find out if the parties exist, what is their area of business, their previous behavior, what exactly are the goods, what is their purpose (civil/military), can these be used as declared in the application, is the provided documentation enough and provide sufficient guarantees etc. Decision is based on 8 assessment criteria:

- End-user country’s international obligations and commitments (export control regimes, treaty’s, sanctions);
- Respect of human rights situation in end-user country;
- Internal situation (including tensions and armed conflicts);
- Impact on regional peace, security and stability;
- National security;
- The overall stand on international community, international law and terrorism;
- Risk of diversion;
- Compatibility of the technology or equipment with economic capacity/needs of the recipient country.

In case of license approval, license will be issued. Licenses are issued in 3 identical specimens: one copy stays to the Commission, one original and one copy will be given to the applicant. In case of registration, a Commission decision in a form of a letter will be sent to the entity. In case of end-user documents, a certificate will be issued. In case of a denial, a reasoned Commission decision will be issued. The Commission maintains a database with all relevant data of currently registered companies. List of certified companies and registered military goods brokers is publicly available in the Ministry of Foreign Affairs web site.

If necessary licenses/registry entries can be revoked, suspended or annulled (when the conditions are fulfilled or end-user country situation changed quickly etc). The Strategic Goods Act sets the rules for that.

7. Reporting and record keeping

All licensed goods/registered companies are subject to record keeping and reporting requirements.

a. Reporting

All license owners must return the original used license with the actual transfers data to the Commission within 10 days after the deadline drops. All registered companies have to report twice a year to the Commission about their activities (including nil reports). A report shall be prepared for each previous half-year as at 30 June and 31 December and
shall be submitted to the Commission within 30 calendar days as of the end of the reporting period.

Strategic Goods Commission is responsible for submitting relevant transfers data to the international instruments (UN, EU etc.).

b. Record keeping
The owner of the license/registered company is required to keep record and preserve the documents concerning the transfer of strategic goods and the provision of service for at least ten years as of 1 January of the year following the preparation of the document. The documents, containing the following information relating to the transfer of strategic goods or the provision of service, shall be preserved: the description of the goods or service and the category symbol and number of the list of strategic goods; the quantity and value of the goods or service; the dates of the transfer of goods or the provision of service; the names and addresses of the parties to the transaction; the end-use and end-user of the goods if they are known; other information for the preservation of which the Commission has issued a precept.

8. Notifications
There are circumstances where companies are obliged to notify customs, the Strategic Goods Commission or their contracting party.

The company has to inform its contracting party of the license conditions, including end-use/re-export restrictions. The company has to notify the Customs about intra-EU transfers and in case firearms are transferred via air transportation.

Company must notify the Commission if it has information or suspicion that products or part of it are intended to use for military purpose or any other purpose endangering the national security, for the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of a weapon of mass destruction or for the development, production, maintenance or storage of missiles capable of delivering such weapons.

Also the company must notify the competent authority if the issued document is lost or destroyed, if the licensed imported goods are destroyed, dismantled or totally depreciated, and if the circumstances under what license or registry entry has been issued, have changed.

9. Prohibitions
According to Strategic Goods Act, there are 6 prohibitions to transfer strategic Goods. The following is prohibited:
1) the export and transit of strategic goods and the provision of service to a subject of international sanctions;
2) the diversion from their intended destination of goods subject to the national supervision over the import and end-use of strategic goods without the written consent of the Strategic Goods Commission and the re-export of such goods without proper authorization;
3) the transfer of weapons of mass destruction, of any materials, hardware, software and technology used for the production thereof and the related services regardless of their country of destination excluding when it is absolutely necessary for the demolition thereof;
4) the transfer of antipersonnel mines and the related services, except in the case when it is absolutely necessary for the purpose of training or the demolition thereof;
5) the transfer of goods used for human rights violations and the related service regardless of the country of destination unless the goods are used for public exhibition in a museum due to their historical significance;

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6) the transfer and service of other strategic goods that is prohibited by a treaty.

If an act establishing international sanctions or implementation thereof enables making exceptions from the provisions of first named prohibition, the authorization for the transfer of goods and provision of service shall be granted by the Strategic Goods Commission in the procedure provided for in § 10 of the International Sanctions Act.

10. Awareness Raising
Awareness raising is one of the key parts of effective export controls. Estonia uses all possible ways to reach out to the companies:

- General outreach seminars to cover all export control relevant issues;
- Smaller tailored seminars to cover specific areas (e.g. dual-use goods controls, military goods controls, legislation changes, research and academia needs etc.);
- Web site www.vm.ee to have all relevant regulations available in one place;
- Visits to companies
- Guidelines and “step-by-step” guides;
- Booklets, CDs with information;
- Articles in newspapers, magazines.

11. Contacts

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