

# Export control legislation and enforcement in Scandinavia

The countries in Scandinavia are well known for their business-friendly environment and cooperative supervisory authorities, which have traditionally had a low level of enforcement against violations of export control regulation. However, recent trends underline that companies operating in the Nordic region should implement and follow proper procedures to mitigate the risk of non-compliance with relevant national and international export control legislation. This article provides an overview of the general national regimes and the ongoing trends in relation to export control in Denmark, Norway and Sweden.



## DENMARK

by Simon Fasterkjær Kjeldsen,  
Assistant Attorney,  
Kromann Reumert

**T**he area of export control has been one of growing interest in Denmark in recent years, peaking in 2017. This is mainly due to the fact that several companies operating from Denmark were publicly exposed as having sold mass-surveillance systems to oppressive governments in the Middle East, including during the 'Arab Spring'. This led to extensive media

coverage and intense public debate. At the same time, several governmental investigations were initiated, including an interesting case before the Danish Parliamentary Ombudsman concerning the right of access to the name of one of the involved companies.<sup>1</sup>

Danish journalists also published a story this year<sup>2</sup> on branded Western soft drinks that were sold from a North Korean grocery store which originated from a production facility in Fredericia, a Danish city in the southern part of Jutland. The soft drinks had somehow reached North Korea despite the extensive international sanctions regime imposed on the country.

In August, Denmark was heavily criticised by the inter-governmental

body, the Financial Action Task Force ('FATF'), for the government's insufficient efforts in relation to the implementation and enforcement of financial sanctions.<sup>3</sup>

These events have all contributed to enhance the attention paid by political parties and private corporations operating in Denmark to the export control supervisory powers and obligations of exporting companies, including authorisation and compliance procedures under the relevant Danish (and European) legislation.

### Danish legislation

Denmark has signed and ratified a number of international codes of

conduct, conventions and treaties and accordingly participates in various international forums and coordinating arrangements with regard to export control.<sup>4</sup>

As one of the current 28 Member States of the European Union, Denmark is also subject to the relevant European legislation. This, naturally, includes the EU Dual-Use Regulation<sup>5</sup> and other EU regulations (including sanctions) adopted under the Common Foreign and Security Policy of the European Union. These regulations have direct effect on governmental authorities and on private parties operating in Denmark and they apply (often with short notice for the sanctions) to any actions within the territory of the Kingdom of Denmark and to Danish companies, organisations and individuals in any location; and on board aircraft or vessels under Danish jurisdiction.

Certain national acts and special provisions have been adopted in order to apply, administer and enforce the harmonised legal regime. The Danish enabling act<sup>6</sup> provides the legal basis for the Danish government to apply, administer and enforce the common trade-related regulations of the European Union. In addition, the Danish Export Executive Order<sup>7</sup> provides supplementing provisions with regard to export control of dual-use goods and appoints the Danish Business Authority ('DBA') as the competent national authority for administering and overseeing the area of export control in Denmark.

The Danish Criminal Act<sup>8</sup> contains additional criminal provisions on export control. Intended violation of EU sanctions are subject to fines and imprisonment of up to four months (or four years under aggravating circumstances), see section 110 c (2) and (3). In cases involving only gross negligence, the consequences are fines and imprisonment of up to two years. Furthermore, non-compliance with the export authorisation requirement related to dual-use goods and technologies may involve criminal liability in the form of a fine or imprisonment of up to two years (or six years under aggravating circumstances). Cases involving intentional assistance relating to funding of terrorism are covered by special provisions in section 114 b of the Danish Criminal Act, which stipulates imprisonment of up to 10 years.



### Dual-use goods/technologies

Generally, companies exporting from Denmark and out of the customs zone of the EU must apply for an authorisation when exporting dual-use goods or technologies listed in Annexes I or IV of the EU Dual-Use Regulation. When exporting within the European Union, only the dual-use goods and technologies listed in Annex IV require such an authorisation. The export authorisations can be obtained from the DBA, which aims to respond within 14 business days.

Three types of authorisation can be obtained by use of an easily accessible digital application procedure:<sup>9</sup>

- *Individual authorisation* – which can be obtained for one-off exports of dual-use goods and technologies, critical exports and by application of the catch-all regime;
- *EU authorisation* – which can be obtained under an eased regime for exports to specified closely-related countries; Australia, Canada, Japan, New Zealand, Norway, Switzerland (including Liechtenstein) and the United States;
- *Global authorisation* – which can be obtained for regular less critical

exports of specified products to civil end-users in specified countries.

The DBA receives more than 700 enquiries a year related to export control. However, the authority maintains a high response rate, and the Team for Global Trade & Security is often able to provide guidance on short notice, e.g., about the required authorisation for a specific export.

The high level of pre-application guidance and responsiveness from the DBA is also reflected in the correspondingly few declined applications for individual authorisations.

In addition, the general trend indicates an increase in the number of issued authorisations reflecting the enhanced awareness in recent years (see table below).

### Catch-all provision

Pursuant to the option stipulated in article 4(5) of the Dual-Use Regulation, Denmark has adopted national catch-all provisions. These require that the exporter must apply for an export authorisation for a product even if it is not listed in Annex I to the Dual-Use Regulation, if:

	2012	2013	2014	2015	2016
Approved	293	339	468	493	411
Declined	10	11	26	17	12
Total	303	350	494	510	423

Source: The Danish Business Authority, November 2017

- The product, in whole or in part, is or may be intended for use in connection with weapons of mass destruction (or missiles capable of carrying such weapons), or
- The product, in whole or in part, is or may be intended for military end use in countries under an international arms embargo.

As a result of an amending act to the enabling act in force from 1 August 2003,<sup>10</sup> the catch-all provisions apply if the exporter is aware of suspicious circumstances causing it to suspect that the product will be used in relation to weapons of mass destruction, or if it has reason to believe that the export is related to military purposes in countries under an international arms embargo. The DBA has indicated<sup>11</sup> that such suspicious circumstances and issues relating to the export can be, for example, that:

- the customer provides a particularly favourable contract, or that the contract contains unusual payment terms.
- the customer demands special diversion of delivery routes, or that requirements for the order size, packaging, delivery route or place of delivery seem unusual.
- the customer requests customisation of the product, which is contrary to the normal usage, design or industry of the ordered product.
- the customer refuses to sign and/or issue an end-user certificate

### Military goods/weapons

Conventional military goods, e.g., weapons, ammunition, warfare equipment, military simulation, explosives and software/technology related thereto, do not fall under the Danish dual-use regime and therefore do not fall under the supervisory powers of the DBA.

Instead, section 6 of the Danish Weapons Act<sup>12</sup> entails a requirement for the exporter to obtain a licence from the Ministry of Justice ahead of an export for the products listed on the Common Military List of the European Union.<sup>13</sup>

However, the provision covers more products than are listed on the Common List; hence, hunting weapons and ammunition for hunting purposes are also subject to an export licence.

### Sanctions/embargoes

Through membership of the United Nations and the European Union, Denmark has entered into an international commitment to comply with the sanctions and embargoes adopted by these international communities. Denmark meets these commitments without imposing unilateral or additional sanctions. Accordingly, relevant national measures are being adopted to ensure that UN and EU sanctions and embargoes can be enforced. The Danish Ministry of Foreign Affairs maintains a website<sup>14</sup> of the UN and EU sanctions that Danish companies and individuals are currently required to comply with.

As a special curiosity, it can however be observed, that Denmark unilaterally has adopted a special national regime imposing a travel ban on (currently) 11 named religious preachers who are viewed by the authorities as 'hate preachers'.<sup>15</sup> These persons are restricted from entering Denmark.

### Enforcement

The enforcement of export controls in Denmark is relatively mild both in terms of the level of fines in the event of unintended non-compliance and in terms of the dedicated resources and priority agenda of the relevant authorities.

The DBA has a clear objective to provide guidance in order to prevent violations. Accordingly, the DBA will typically sanction misunderstandings and/or minor (procedural) mistakes with an administrative warning (subject to disclosure and mitigating

## Denmark: authorities and their competencies

**Danish Business Authority DBA** is the competent national export control authority and administers and provides information about the rules.

[www.eksportkontrol.dk](http://www.eksportkontrol.dk)

**Ministry of Justice** Authority over weapons and military-related goods.

[www.jm.dk](http://www.jm.dk)

**Ministry of Foreign Affairs** Responsible for adoption, coordination and interpretation of legislation. [www.um.dk](http://www.um.dk)

**The State Prosecutor for Serious Economic and International Crime (SØIK)**

Responsible for the enforcement of export control violations under Danish criminal law.

[www.anklagemyndigheden.dk](http://www.anklagemyndigheden.dk)

**Tax and Customs Authority** Border-related tasks. [www.skat.dk](http://www.skat.dk)

acts to prevent recurrence). Violations of a more serious nature will, however, be reported to the State Prosecutor for Serious Economic and International Crime ('SØIK'), which will pursue imposition of a fine, and imprisonment under very aggravating circumstances.

SØIK has various investigative tools that are not available to the DBA; e.g., surveillance, interception of communication, seizure of evidence, and so on. SØIK also has the legal powers to conduct searches of private premises following a court decision. The DBA does not have such an option but does contingently conduct pre-announced site visits to all known producers and exporters of dual-use

### The 'Oil-for-food' case

The case involved a Danish company that had agreed to sell and export trucks from Denmark and other places for a value of DKK 125,000,000 (approx. US \$20m) to the authorities in Iraq at a time when the country was subject to the UN embargo named the 'Oil-for-food' programme ('OFF').

The OFF programme was administered by the United Nations and entailed that funds from the sale of oil from Iraq could only be used for the purchase of food, medicine and humanitarian necessities.

However, the payment for the trucks derived from a UN-administered account related to the sale of oil from Iraq. In addition, the truck sales agreement contained a surcharge of 10% named 'aftersales services' that was to be retransferred to the Iraqi authorities following the payments. This surcharge was deemed by the Danish police to be in violation of the UN embargo, following an exposure of the company's involvement and knowledge in the official report issued in 2005 by the independent investigative commission, the Independent Inquiry Committee. At this time, the criminal liability was however time-barred, but the company was deemed to have gained an estimated profit of DKK 10,000,000 (US \$1.6m), and this was forfeited pursuant to the judgment of the Danish Supreme Court.

### Links and notes

- <sup>1</sup> [http://www.ombudsmanden.dk/find/udtalelser/bere\\_tningssager/alle\\_bsager/2017-11/](http://www.ombudsmanden.dk/find/udtalelser/bere_tningssager/alle_bsager/2017-11/) (available in Danish only)
- <sup>2</sup> <http://nyheder.tv2.dk/udland/2017-10-29-sanktioner-har-ikke-den-store-effekt-paa-nordkoreas-styre-tv-2-fandt-dansk> (available in Danish only)
- <sup>3</sup> <http://www.fatf-gafi.org/countries/d-i/denmark/documents/mer-denmark-2017.html>
- <sup>4</sup> Including The Australia Group, Missile Technology Control Regime, Nuclear Suppliers Group and The Wassenaar Arrangement
- <sup>5</sup> Council Regulation no. 428/2009 and subsequent amendments
- <sup>6</sup> Consolidated Act no. 635 of 9 June 2011 concerning the use of certain legislative acts of the European Community about economic connections to third countries etc.
- <sup>7</sup> Executive Order no. 475 of 14 June 2005 on control of exports of goods and technology with double usage ('dual-use') and control of technical assistance
- <sup>8</sup> Consolidated Act no. 977 of 9 August 2017
- <sup>9</sup> [https://indberet.virk.dk/myndigheder/stat/ERST/Ansoegningsskema\\_til\\_ansoegning\\_om\\_tilladelse\\_til\\_ufoerelse\\_af\\_produkter\\_og\\_teknologi\\_med\\_dobbelt\\_anvendelse](https://indberet.virk.dk/myndigheder/stat/ERST/Ansoegningsskema_til_ansoegning_om_tilladelse_til_ufoerelse_af_produkter_og_teknologi_med_dobbelt_anvendelse)
- <sup>10</sup> Act No. 407 of 28 May 2003 concerning the amendment of the Act on the use of certain legislative acts of the European Community about economic connections to third countries etc.
- <sup>11</sup> cf. the preparatory works to the Act No. 407 of 28 May 2003 concerning the amendment of the Act on the use of certain legislative acts of the European Community about economic connections to third countries etc.
- <sup>12</sup> Consolidated Act no. 1005 of 22 October 2012
- <sup>13</sup> Notice on equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, 2015 O.J. C 129/1
- <sup>14</sup> <http://um.dk/da/Udenrigspolitik/folkeretten/sanktioner/gældende-sanktioner/>
- <sup>15</sup> A list of restricted 'hate preachers' is available here: [https://www.nyidanmark.dk/da-dk/Ophold/religiose-forkyndere/den\\_nationale-sanktionsliste/religiose\\_forkyndere\\_med\\_indrejseforbud.htm](https://www.nyidanmark.dk/da-dk/Ophold/religiose-forkyndere/den_nationale-sanktionsliste/religiose_forkyndere_med_indrejseforbud.htm)

goods and technologies in Denmark. Such site visits serve as a good opportunity to provide counselling and obtain guidance in order to ensure compliance with the requirements of the applicable export control legislation.

Most cases concerning violations of export control rules in Denmark are settled out of court with a fixed-penalty notice. With the exception of the 'Oil-for-Food' case (see box, previous page), there are, to my knowledge, no *published* cases involving criminal liability for export control violation on the part of a Danish company or individual. However, a number of decisions on fines, known to practitioners, are indicative of the general level of the potential economic consequences following the imposition of criminal liability under Danish law.

In accordance with that practice, a company that fails to obtain the required export control authorisation(s) will generally be subject to a fine most likely in the range of DKK 25,000-50,000 (approximately US \$4,000-8,000) depending on the degree of negligence. Failure to comply with sanctions and/or an arms embargo is punished significantly more heavily and will generally trigger a fine of a substantially higher amount depending on the circumstances.

### Future trends

Danish authorities have traditionally not enforced export controls rigorously, and it has been an

(informal) objective of the legal and structural set-up of the Danish government to assure fulfilment of international obligations without over-complying. Recent trends suggest a shift in this approach is taking place, and this can also be detected in the increased awareness among compliance officers of export control obligations.

Following the intense media coverage as well as the significant public debate in 2017 concerning export control plus the FATF's criticism of Denmark's efforts as being insufficient, it would be reasonable to expect that the area of export control will receive even greater attention from the Danish authorities in the future. Accordingly, more investigations are likely to be initiated, and companies are more likely to face scrutiny of their export control compliance procedures.

*Simon Fasterkjær Kjeldsen is an assistant attorney in the Copenhagen office of Kromann Reumert. He is associated with the firm's International Trade practice group and has extensive experience in the area of export control. He holds a position as an external lecturer in EU Law at the University of Copenhagen. [sfk@kromannreumert.com](mailto:sfk@kromannreumert.com)*



### NORWAY

by Hugo Munthe-Kaas, Lawyer, Managing Associate, Thommessen

The public focus on Norwegian export controls has gradually become more intense, partly due to certain mistakes made public in recent years. For example, in 2011 it was revealed that the Norwegian government indirectly supplied Muammar al-Gaddafi's elite soldiers with military equipment.

Another important episode was the sale of seven decommissioned military vessels/combat boats to a former

warlord in Nigeria, which became known as the 'Nigerian Combat Boat' matter. Amongst other examples, these events have led to a continuous and systematic examination of Norwegian export policies. The tendency for a stricter export policy has not only been applied to the export of weapons and military equipment, but also to the export of goods which can be used for both civil and military purposes ('dual-use items').

### Norwegian legislation

Norwegian export controls are administered by the Norwegian Ministry of Foreign Affairs (the 'Foreign Ministry'), Section for Export Control, on the basis of national legislation. The legal basis for export control is the Norwegian Export

Control Act.<sup>16</sup> The provisions in the Norwegian Export Control Act are relatively general and give the Foreign Ministry responsibility for drawing up regulations and guidelines with more detailed descriptions for the export control of defence-related items and dual-use items. The Foreign Ministry is given such authority to ensure that export controls are implemented effectively. Furthermore, the Foreign Ministry may set conditions for granting licences under these regulations that are compatible with the purpose of the Norwegian Export Control Act.

More detailed provisions laid down by the Foreign Ministry are found in the Export Control Regulation,<sup>17</sup> which gives a detailed description of provisions governing the export control

of defence-related and dual-use items.

In addition, detailed provisions regarding the consideration of applications for export licences draw on the Export Control Guidelines of the Foreign Ministry.<sup>18</sup>

### The Export Control Regulation

Pursuant to clause 4 of the Export Control Regulation, an export licence from the Foreign Ministry is required for selected products and related technology. The products and technology which are subject to licensing requirement are specified in List I (defence-related products) and List II (dual-use items), which constitute Appendix I and Appendix II to the Export Control Regulation. (List II includes civilian products and related technology and services not included in List I that may also have military uses.) The lists are the result of negotiations within the multilateral export control regimes in which Norway participates. The lists form an integral part of the legislation and are updated regularly.

In addition to the licensing requirement for defence and dual-use items, it is specified in clause 5 of the Export Control Regulation that an export licence from the Foreign Ministry is also required for services related to the same items. An export licence is also required for other services that may serve to develop the military capability of a country, and that are provided abroad or in Norway for use abroad.

Where there is doubt, the Foreign Ministry will, according to clause 3 of the Export Control Regulation, decide whether or not the products, technology or services are subject to the licensing requirement. The licensing requirement also applies to the export of products from customs warehouses.

Pursuant to clause 8 of the Export Control Regulation, some items are exempted from the licensing requirement. Examples of products that are exempted include:

- dual-use items that are returned to a foreign owner after temporary import to Norway for exhibition or demonstration or repair;
- rescue equipment and oil spill response equipment exported in connection with rescue operations;
- products, services and technology



for use on the Norwegian continental shelf.

### Guidelines for the Export Control Act

The purpose of the Export Control Guidelines is to set out the procedures and criteria used by the Ministry of Foreign Affairs, when dealing with an export licence application. Pursuant to Clause 2.3 of the Guidelines, an application shall be rejected, *inter alia*, if the export of the goods is inconsistent with Norway's international obligations or if the export would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination. An application shall also be rejected if there is a clear risk that the intended recipient would use the military technology or equipment to be exported aggressively against another country or to assert by force a territorial claim.

When dealing with applications, the Foreign Ministry shall take particular account of the national security of Norway, as well as that of friendly and allied countries. In the evaluation, the behaviour of the buyer country with regard to the international community, should also be taken into consideration; in particular, its attitude to terrorism, the nature of its alliances, and respect for international law. A specific assessment shall also be made to determine whether there is a risk that the military technology or

equipment will be diverted within the buyer country or re-exported under undesirable conditions.

The Foreign Ministry shall also consider the compatibility of the exports of the military technology or equipment with the technical and economic capacity of the recipient country, taking into account the desirability that states should meet their legitimate security and defence needs with the least diversion of human and economic resources for armaments.

When considering whether to grant a licence, an assessment shall also be made as to whether there is a risk of the arms or items being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.

### Catch all provisions

Even though an item is not listed in List I or II, it may be subject to Norwegian export control. This may be the case if the goods fall within the scope of the 'catch-all' provisions in the Export Control Regulation. Regardless of the lists, an authorisation is always required for the export of goods to areas where there is war or the threat of war. The same applies in cases where the exporter knows that the goods will be used in connection with the development, production or maintenance of nuclear, chemical or biological weapons, or missiles capable of launching such weapons. In other

## Norway: authorities and their competencies

**Norwegian Ministry of Foreign Affairs**  
MFA is the national authority in charge of export control (both defence-related and dual-use). [www.mfa.no](http://www.mfa.no)

**Norwegian Customs** In charge of controlling import and export across Norwegian borders. [www.toll.no/en](http://www.toll.no/en)

**Norwegian Police Security Service**  
Enforcement of the export control rules. [www.pst.no](http://www.pst.no)

words, the ‘catch-all’ provisions focus on the end use/end-users of the goods. If the goods are considered to fall within the scope of any ‘catch-all’ provision, the Foreign Ministry will order the exporter to apply for an authorisation pursuant to the ‘catch-all’ provision.

### Sanctions/embargoes

Economic sanctions are a foreign policy tool that Norway historically has not often used unless the restrictive measures have been based on resolutions by the UN Security Council.

Norway is not a member of the EU and is therefore not formally obliged to follow EU sanctions. However, in recent years there has been a development in this area, and since the beginning of the 2000s Norway has increasingly joined EU sanctions, even in instances where there has not been any resolution by the UN Security Council. Today, adherence to EU sanctions has become the rule rather than the exception.

In 2001, Norway adopted new legislation that gave the Norwegian government authority to implement EU sanctions. Since the act was introduced, Norway has adhered to EU sanctions against countries such as Myanmar, Belarus, Iran and Syria, and more recently those against Russia and Ukraine. Following the new act, the

Norwegian government has also established a system securing rapid and efficient implementation of EU sanctions as soon as they have been decided upon in the EU.

For Norway, it is not easy to see any other option than to follow EU sanctions. Without sanctions, Norway would serve as a loophole for those who want to circumvent sanctions and thus undermine the unifying pressure the EU Member States are trying to exercise. However, in the case of Russia the sanctions have been directed against one of Norway’s neighbours and the effect of the sanctions have become more noticeable for Norwegian businesses, especially within the oil and gas industry. In this new situation, the problematic sides of rapidly implementing EU sanctions have become more apparent and the said Norwegian practice has become subject to criticism.

### Enforcement

As mentioned above, one of the more recent export control cases in Norway concerned the sale in 2012 by the Norwegian Armed Forces of a fleet of its decommissioned, but still sophisticated, motor torpedo boats to a former Niger Delta militant leader and warlord, Government Ekpemupolo, who for years led a devastating insurgency against the Nigerian government. Among them were six fast-speed motor torpedo boats and the warship *KNM Horten* (see box, below). When the sale became known to the public through news articles some time later, it led to a political outcry. The person responsible for the sale was (in May 2017) sentenced to jail for four years and eight months. Further, about NOK 1 million (approximately US \$120,000) of his funds were confiscated by the state, and he was sentenced to pay about NOK 3 million in damages.

Clause 5 of the Norwegian Export Control Act contains a penalty

provision concerning violation of the export control provisions. Unless the matter is subject to more severe penal provisions, pursuant to provisions in the Norwegian Criminal Code, an exporter is liable to fines or a term of imprisonment not exceeding five years, or both, if he export items contrary to the provisions in the Norwegian Export Control Act or any regulation issued pursuant thereto. The Norwegian Police Security Service is the prosecuting authority in the event of contraventions of the export control legislation.

Pursuant to clause 2 of the Norwegian Export Control Act, every person has a duty to provide the Foreign Ministry with any assistance or information required in order to ensure compliance with the provisions in the act or any regulation issued pursuant thereto. For this purpose, the Foreign Ministry may conduct inspections and require access to recorded accounting information, accounting records, business documents and other documents that may be of importance. If an enterprise or person does not comply with the duty to provide information set out in clause 2, the Foreign 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 the compliance with the order.

Breach of the Norwegian sanction rules may be punishable by way of fines and/or prison up to three years.

Breach of the export control/sanction rules by a person who has acted on behalf of a company may also lead to criminal liability for the company. The penalty for the company, if liable, is a fine and may apply even if no individual person is identified and punished for the breach. The company may also, by a court judgment, be deprived of the right to carry on business or may be prohibited from carrying it on in certain forms.

### Future trends

There is broad political consensus that Norway should have a viable defence industry. This is important to maintain jobs, Norway’s defence capability, and an important industrial sector which is driving technology development, both in military and civilian sectors.

In 2016, Norway exported arms and military equipment for around NOK

### The ‘Nigerian Combat Boat’ matter

A former lieutenant commander in the Armed Forces Logistics Organization was charged with several cases of gross economic crime in connection with the sale of seven decommissioned navy vessels/combat boats to a former warlord in Nigeria. He was found guilty of the charge. The sentence was set at prison for four years and eight months, which was eight months longer than the prosecution had requested. He was also sentenced to pay damages to the Armed Forces and the KNM Narvik Foundation for a total of NOK 3,098,750 (approx. US \$380,000) and confiscation of NOK 1,041,381 (approx. US \$128,000).

3.6 billion (US \$440m). This is an increase of 10% from 2015. Exports of arms and munitions accounted for around NOK 2.9 billion (approx. US \$ 355m) of this amount, and other defence-related products for NOK 650 million (approx. US \$80m). In addition, there were exports of dual-use items with a total value of around NOK 300 million (approx. US \$36.7m).

At the same time, it is clear that

#### Links and notes

<sup>10</sup> Act of 18 December 1987 relating to Control of the Export of Strategic Goods, Services, Technology, etc.

<sup>17</sup> Regulation dated 19 June 2013 relating to the export of defence-related products, dual-use items, technology and services

<sup>18</sup> Guidelines of 28 February 1992 the Ministry of Foreign Affairs when dealing with applications concerning the export of defence-related products, as well as technology and services for military purposes

armed conflicts and security threats in the world also create challenges for Norway's export control regime. For example, exports to Kuwait, United Arab Emirates ('UAE'), Qatar, Oman and Saudi Arabia have recently been under debate. These countries constitute emerging and potential markets for the Norwegian defence industry. However, some of the countries have, *inter alia*, participated in the Saudi-led coalition that intervenes in the armed conflict in Yemen on the call from Yemeni authorities. This has again led to a discussion of whether Norwegian weapons are being used in that conflict in breach of Norwegian export control law.

To sum up, the Norwegian defence industry is growing and will most likely continue to do so in the coming years. However, the increased political and

public focus on who Norway is providing weapons to will inevitably also lead to more investigations, stricter enforcement and punishment, and an increased focus on the export control procedures of companies in Norway.

*Hugo Munthe-Kaas is a lawyer and Managing Associate at the Oslo office of the Norwegian law firm Thommessen. He is associated with the firm's Trade Compliance practice group and has extensive experience in the area of export controls, sanctions, AML and anti-corruption.*

[huk@thommessen.no](mailto:huk@thommessen.no)



## SWEDEN

by Erik Lagerlöf,  
Adjunct Professor of  
Law, Manager,  
Vinge

**W**ith a significant arms industry dating back to its Cold War neutrality, Sweden is one of the largest weapons exporters in the world. Its export of weapons has not been uncontroversial and the export of weapons from Sweden has been regulated since the 1930s. Due to its sensitive nature, Swedish arms exports have consistently been subject to extensive media attention and various political initiatives. Following a proposal by the Swedish national authority responsible for granting export authorisations (see further below), 2017 has been a particularly intense year in this regard.

The increase in Swedish arms exports in general has been another topic of great interest for the Swedish media. Compared with 2015, Swedish arms exports increased by 45% in 2016, resulting in a total export value of Swedish arms of SEK 11 billion (roughly USD 1.3 billion). 88% of Swedish arms export went to countries within the EU and the EEA and to countries with which Sweden cooperates closely, such as Canada, the

United States and Brazil. The value of arms exports to the Middle East in 2016 has been estimated to SEK 160 million (around USD 19.3 million), which is a significant decrease when compared to previous years.

Another topic that has caused some stir in the Swedish press in 2017 was the decision by Norway to continue buying German submarines, rather than to renew its submarine fleet with Swedish vessels.

#### Swedish legislation

As an EU Member State, Sweden is subject to EU law and the wide-ranging

competence of the EU legislator. However, Member States have in general reserved the right to domestically make decisions relating to conventional arms transfer policy and practice. The EU has therefore only played a limited part in regulating the transfer of arms. Accordingly, while export control provisions concerning dual-use products have been in place at an EU level since 1995, the EU does not yet play a direct role in managing arms transfers to and from the Member States.

Exports of dual-use items from Sweden are regulated by the EU Dual-



Use Regulation,<sup>19</sup> which establishes a system based on two core principles: the free transfer of goods and technologies within the EU, and the prohibition of export of such outside the EU without a national licence. There is also a Directive,<sup>20</sup> which is meant to simplify the rules and procedures applicable to the intra-Community transfer of defence-related products.<sup>21</sup> Moreover, although there is no common regime in the EU for the export of arms, the EU Code of Conduct for Arms Exports was adopted in 1998 and provides guidelines for exports and imports of conventional arms. It also defines mechanisms for information exchange, consultation and follow-up procedures. This Code of Conduct was improved by the adoption of the Common Position 944/2008,<sup>22</sup> which has reinforced the recommendations of the Code of Conduct.

At a national level, the EU Dual-Use Regulation is complemented primarily by the Swedish Dual-Use Act.<sup>23</sup> In addition to supplementary provisions to the EU Dual-Use Regulation, the Swedish Dual-Use Act also contains rules generated by the Common Position 944/2008.

Alongside its commitments as a Member State of the EU, Sweden has signed and ratified a number of international treaties and programmes with nations and international organisations.<sup>24</sup> These international agreements must be observed by the relevant authority in all cases when it decides if it should grant export authorisation.

### Dual-use goods/technologies

It is for the exporting company to assess whether it is necessary to apply for an export licence in relation to the export of a particular product or a transfer of information. The

#### Exporting to Brazil

Brazil was, perhaps quite surprisingly, in terms of value the number one export destination for Swedish military goods during 2016. Goods amounting to a value of SEK 2,821 million (approx. US \$340 million) were exported to the South American country, according to ISP's (Inspectorate of Strategic Products) yearly operational report from 2016. This is explained by the initiation of a delivery of the Swedish fighter aircraft Saab JAS Gripen.

Inspectorate of Strategic Products<sup>25</sup> ('ISP') is the body primarily responsible for considering an export application and granting the necessary export authorisation.

In principle, the transfer of dual-use goods to other EU Member States does not require specific authorisation. However, particularly sensitive products are subject to an exception from this rule. A list of such products is provided in Annex IV of the EU Dual-Use Regulation. In contrast to transfers within the EU, all exports of dual-use goods leaving EU territory must have the necessary authorisation. Annex I of the EU Dual-Use Regulation lists products which are considered to be of dual-use. According to Article 4(5) of the EU Dual-Use Regulation (the so-called 'catch-all' provision), Member States may add to the EU list of dual-use items. However, Sweden has not yet taken the opportunity to do so. Further, three different types of authorisation for such third-country exports must be considered:

- The **individual authorisation** applies to a specific exporter for the export of a specified product to a recipient in a specified destination.
- The **EU (general) authorisation** covers exports to specific third countries which fulfil certain requirements specified in the EU Dual-Use Regulation (currently concerning exports to Australia, Canada, Japan, New Zealand, Norway, Switzerland (including Lichtenstein) and the US). This type of authorisation does not require the exporter to submit an application to the ISP, but a notification must be sent to this authority when the authorisation is used for the first time.
- The **global authorisation** may cover products listed in Annex I of the EU Dual-Use Regulation. This authorisation allows unlimited export until it expires or is revoked and is valid for export to one or several countries, as further stated in the authorisation.

### Military goods/weapons

The Swedish export control process for military goods is primarily based on the Swedish Military Equipment Act.<sup>26</sup> The Swedish government's export guidelines direct the assessment on a case-by-case basis and include several conditions that should be met in order

## Sweden: authorities and their competencies

### Inspectorate of Strategic Products ('ISP')

ISP is the national authority in charge of controlling and ensuring compliance with export control legislation regarding strategic products (i.e. dual-use goods and military equipment). <http://isp.se/eng>

### Swedish Radiation Safety Authority ('SSM')

SSM is responsible for the aforementioned tasks of the ISP with regards to nuclear materials and equipment (category 0 in Annex 1 of the Dual-use Regulation).

[www.stralsakerhetsmyndigheten.se/en](http://www.stralsakerhetsmyndigheten.se/en)

### Swedish Customs

In charge of controlling import and export across the Swedish borders. Takes part in supervision visits with the ISP.

[www.tullverket.se/en](http://www.tullverket.se/en)

**Ministry of Foreign Affairs** Adopts legislation.

[www.government.se/government-of-sweden/ministry-for-foreign-affairs/](http://www.government.se/government-of-sweden/ministry-for-foreign-affairs/)

### Swedish Prosecution Authority

Enforces Swedish criminal law.

[www.aklagare.se/en](http://www.aklagare.se/en)

to permit export. The Swedish list of controlled military goods is in general consistent with the Common Military List of the EU.<sup>27</sup> However, there are three national amendments to the EU list concerning (i) nuclear charges and special parts to such charges, (ii) fortification facilities and (iii) certain chemical munitions. All exports of military goods and services are subject to authorisation by the ISP.

Similar to authorisations of dual-use goods, there are three types of authorisation concerning military equipment available in Sweden. A company intending to export military goods within the EEA can apply for either a general, individual or global export authorisation. For export to countries outside of the EEA, a company can apply for either an individual or global export authorisation.

Further, within the framework of EU cooperation, Member States exchange information concerning rejections of military equipment export authorisations. During 2016, Sweden received 350 notifications from other EU Member States and Norway and submitted 21 such notifications to other Member States.<sup>28</sup>



### Sanctions/embargoes

Sweden only adheres to the sanctions decided by the EU and the UN's Security Council. No other sanctions have been imposed by Sweden towards any other country or individual. Existing sanctions are enforced in accordance with the Swedish Act on International Sanctions.<sup>29</sup> Moreover, the government publishes information concerning current sanctions on its website.<sup>30</sup>

### Enforcement

It is for the exporting company to ensure that it has the required authorisation in relation to exports of both dual-use products and military goods. As already noted above, the ISP is the supervising authority for exports of both dual-use and military goods. It is possible to seek guidance from the ISP prior to any export regarding the need for authorisation and the authority may also issue a preliminary ruling in this regard in relation to a

potential export. However, it must be noted that a favourable preliminary ruling by the ISP does not constitute a formal authorisation.

Moreover, the ISP has significant powers in order to perform its supervisory task. For example, it may demand extensive information from any entity that deals with the export of dual-use goods. The authority is also entitled to access facilities (except for residences) that are used in relation to relevant export activities. The ISP may also call upon assistance from other national authorities, including the police, when performing its duties. Concerning military goods, the ISP's supervisory tasks cover manufacturers and providers of such equipment, but not the exporters as such.

If an exporting company or any of its employees does not comply with applicable regulations concerning dual-use goods or military items, they risk different civil and criminal sanctions. With regard to dual-use goods, existing sanctions are found primarily in the Swedish Dual-Use Act. Sanctions related to exports of military goods are chiefly found in the Military Equipment Act, but there are also sanctions provided for in the Swedish Act on Penalties for Smuggling<sup>31</sup> and the Swedish Penal Code.

The available sanctions related to both dual-use goods and military equipment are mainly criminal in nature. Gross negligence or, in some cases, intent is generally required in order for a sanction to be imposed. However, it should be noted that a company may also be fined for not ensuring that it has sufficient procedures in place to avoid breaching the applicable legislation. The maximum company penalty amounts to SEK 10,000,000 (around US \$1.2m). Furthermore, goods may also be confiscated and forfeit.

While at least 200 cases have generated some form of investigation in Sweden since the 1990s, only a few of those cases have resulted in prosecution and even fewer have led to conviction. The government has explained the low number of prosecutions and convictions by the trivial nature of most cases.

### Future trends

On 29 June 2017, the Swedish government announced that it is proposing the adoption of a more comprehensive control of the export of

armaments. The government proposes that the standing of democracy in the receiving state should be a key condition when considering licence applications.

It is also suggested that the requirement that the recipient country respects human rights should be tightened. Whether the exports would discourage sustainable development in the recipient country is proposed to be another factor to consider. In addition, the government has also put forward proposals on improving transparency and rules on increased authorisation and control requirements. Further, the government proposes that penalties should replace certain criminal sanctions for less serious violations in order to achieve a more effective system of sanctions. Criminal sanctions are planned, however, to be retained for more serious offences. The suggested amendments are proposed to enter into force on 1 April 2018.

Further, criminal sanctions for violations of the Military Equipment Act, such as failure to submit required information to the competent authority, are proposed to be replaced by a system of fees, ranging from SEK 3,000 (around US \$360) to SEK 200,000 (around US \$24,000). These proposals are expected to enter into force on 15 April 2018.

Finally, the consequences of Brexit are still not clear. However, in view of existing EU law, it must be emphasised that any export of dual-use goods and/or military equipment from Sweden to the UK may well be affected by the UK's decision to leave the European Union. For example, it is highly uncertain to what extent an exporting company will be able to continue to rely on the EU Dual-Use Regulation, or any legal act of similar nature, post-Brexit.

### Links and notes

<sup>19</sup> Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (Recast) (OJ L 134 29.5.2009, p. 1).

<sup>20</sup> Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (OJ L 146 10.6.2009, p. 1).

<sup>21</sup> Directive 2009/43/EC was amended by the Commission Directive (EU) 2016/970, which entered into force on 16 June 2016.

<sup>22</sup> Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ L 335, 13.12.2008, p. 99).

<sup>23</sup> The Swedish Act (2000:1064) on control of Dual-Use Products and Technical Assistance (Sw. Lag (2000:1064) om kontroll av produkter med dubbla användningsområden och av tekniskt bistånd).

<sup>24</sup> For example the Treaty on the Non-Proliferation of Nuclear Weapons, the Biological Weapons Convention, the Chemical Weapons Convention, the UN Arms Trade Treaty, the Zangger Committee, Nuclear Suppliers Group, the Australia Group, Missile Technology Control Regime and the Wassenaar Arrangement.

<sup>25</sup> Sw. Inspektionen för Strategiska Produkter.

<sup>26</sup> Sw. Lag (1992:1300) om krigsmateriel.

<sup>27</sup> Common Military List of the European Union adopted by the Council on 6 March 2017 (2017/C 097/01).

<sup>28</sup> The Swedish rejections notified to other EU Member States concerned Bahrain, Ecuador, United Arab Emirates (2 notifications), Jordan (2), China, Kuwait, Lebanon, Pakistan, Qatar, Saudi Arabia (2), Taiwan (3) and Turkey (5).

<sup>29</sup> Sw. Lag (1996:95) om vissa internationella sanktioner.

<sup>30</sup> <http://www.government.se/government-policy/foreign-and-security-policy/international-sanctions/>.

<sup>31</sup> Sw. Lag (2000:1225) om straff för smuggling.

*Erik Lagerlöf works at the Stockholm office of the Swedish law firm Vinge where he practises EU and international law, including in customs and cross-border trade issues. Erik is also an Adjunct Professor of law and currently a visiting Fellow at St Edmund's College, Cambridge University.*

[erik.lagerlof@vinge.se](mailto:erik.lagerlof@vinge.se)