

ENGLISH only

Questionnaire on Participating States' Policy and/or National Practices and Procedures for the
Export of Conventional Arms and Related Technology

The Netherlands, 2017 Information Exchange

OSCE participating States are requested to provide details of:

1. Their basic principles, policies and/or national practices on the export of conventional arms and related technology.

It is generally prohibited to export and transfer military goods and technologies without a license issued by the Minister for Foreign Trade and Development Cooperation (the few exceptions to this rule will be further discussed in the answer to question 12). This mandatory license requirement also applies to surplus military goods disposed of by the Netherlands armed forces.

Netherlands policy on the export of conventional arms and related technology is based on the importance attached to the international rule of law, and is characterised by caution and restraint. Netherlands arms exports have to comply with relevant international obligations, such as UN embargoes, the Arms Trade Treaty (ATT) and the EU Common Position 2008/944/CFSP (hereafter: EU Common Position). Because of the political implications, arms exports must be consistent with the foreign and security policy of the Netherlands.

License applications for the export of military equipment are assessed on an individual basis against the Netherlands arms export policy, bearing in mind the nature of the good, its end use and its end-user. For this purpose, primarily the EU Common Position is applied. This Common Position requires that in the case of license applications for the export of military goods to destinations where human rights may be violated, it is to be carefully examined whether the military goods concerned might play a role in any violations of those rights. This does not mean that export of military goods to such destinations will always be prohibited, but that the nature of the goods (and the way in which they can be used) will feature prominently in the assessment of the application. Should there be a link between a proposed export and the human rights violations, then the export will be termed "undesirable" and the requisite export license will be denied. The assessment criteria of the EU Common Position are the following:

1. Respect for the international obligations and commitments of Member States, in particular the sanctions adopted by the UN Security Council or the European Union, agreements on nonproliferation and other subjects, as well as other international obligations.
2. Respect for human rights and international humanitarian law by the country of final destination.
3. Internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts.
4. Preservation of regional peace, security and stability.
5. National security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries.
6. Behavior of the buyer country with regards to the international community, in particular its attitude to terrorism, the nature of its alliances and its respect for international law.
7. Existence of a risk that the military technology or goods will be diverted within the buyer country or re-exported under undesirable conditions.
8. Compatibility of the exports of the military technology or goods 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.

2. Their national legislation governing the export of conventional arms and related technology. If applicable, report changes and/or updates to the data provided in 1995, including any relevant subsidiary legislation.

Since August 1st, 2008 the controls on the export from and transit through the Netherlands of military goods is based on the General Customs Law, the Decree on strategic goods and the Implementation order on strategic goods, in addition to the Arms and Ammunitions Act of 1997. These laws prohibit the export from the Netherlands of goods and technology mentioned in the Common Military List of the European Union (2007/197/CFSP) and the Firearms Directive (Council Directive 91/477/EEC) respectively, without a license from the Minister for Foreign Trade and Development Cooperation, to all countries with the exception of Belgium and Luxembourg (due to the special Customs arrangements under the Benelux Treaty). The Netherlands assesses the license applications according to the eight criteria defined in the EU Common Position and according to the relevant articles of the ATT.

As stated above, in the Netherlands, regulatory controls on strategic goods are based on the following acts, regulations, orders and measures. The texts of the instruments are available at www.wetten.nl (in Dutch). The European dual-use regulation can be found on the website <http://eur-lex.europa.eu/>, in the Official Journal 2009 L134.

General Customs Act (Staatsblad 2008, 111)

The General Customs Act (Algemene Douanewet) is the legal basis of all orders and measures regarding strategic goods mentioned here. The General Customs Act defines the competences pertaining to all the tasks assigned to Customs with regard to goods and movements of goods. Other relevant acts are the Strategic Services Act, containing regulations for the services related to strategic goods, and the Chemical Weapons Convention Implementing Act.

Strategic Goods Order 2012 (Stcr. 2011, 19960)

The Strategic Goods Order 2012 (Besluit strategische goederen 2012) states rules for the export and transit/transshipment of dual-use and military goods. It also provides for certain matters to be further arranged by order of the Minister for Foreign Trade and Development Cooperation. For dual-use goods, the rules specified by the Order consist principally of criminalisation of offences for military goods, and designates the Minister for Foreign Trade and Development Cooperation as the competent authority.

The latter also applies for military goods. For military goods, the Order also specifies rules for a license requirement or a notification requirement in the case of transit. Currently the Strategic Goods Order is under review by the Netherlands government.

Strategic Services Act (Stb. 2011, 445)

The Strategic Services Act (Wet strategische diensten) came into force in January 2012. It contains regulations for three types of services related to strategic goods: intangible transfer of technology, technical assistance and brokering services. The act is relevant for both military and dual-use items.

Economic Offences Act (Stb. 1950, 258)

The Economic Offences Act (Wet op de economische delicten) defines the powers of the Customs Service and the Fiscal Investigation Department (FIOD) with regard to undertaking investigations, and the sentences applicable to offences against the export regulations. Such offences are not subject to the penalty regime of the General Customs Act; they are designated as economic offences.

Arms and Munitions Act (Stb. 1995, 292)

Besides the provisions arising from the General Customs Act, importers and exporters of certain fire arms, launch systems and related munitions may need to take into account the provisions of the Arms and Munitions Act (Wet wapens en munitie). In certain cases, this may mean that a consent is required for importing, exporting or re-exporting arms and munitions regulated by the Act, for which the Minister of Security and Justice is responsible. Its enforcement is the responsibility of the head of police in the region in which an enterprise is established.

3. Any international agreements or guidelines, other than OSCE commitments, covering the export of conventional arms to which they are a party.

The Netherlands has ratified various treaties and participates in several export control regimes aiming to prevent worldwide proliferation of sensitive goods:

- Non-Proliferation Treaty (NPT)
- The Chemical Weapons Convention (CWC)
- Biological and Toxin Weapons Treaty (BTWC)

- Wassenaar Arrangement (WA)
- Nuclear Suppliers Group (NSG)
- Missile Technology Control Regime (MTCR)
- Australia Group (AG)
- Arms Trade Treaty (ATT)

4. The procedures for processing an application to export conventional arms and related technology:

- who is the issuing authority?

Ministry of Foreign Affairs (MFA)

The Ministry of Foreign Affairs (MFA) is responsible for controlling the export, transit/transshipment, brokering and – in the case of chemicals listed in the Annex on Chemicals of the Chemical Weapons Convention – import of strategic goods. The Ministry holds primary political and legal responsibility for implementing the export and transit controls – in particular decisions concerning license applications.

Export licenses for strategic goods are granted by the Minister for Foreign Trade and Development Cooperation. It is the Ministry's objective to promote international security without obstructing Netherlands trade and industry unnecessarily in the performance of its business. Within the Ministry of Foreign Affairs, two departments are involved in export control: the department for International Trade Policy and Economic Governance and the Security Policy department. The latter is responsible for export control on military goods and for dual-use goods and technologies with military end use, including the international political aspects of arms controls and international security policy.

The Security Policy department will assess license applications against the eight criteria of EU Common Position, which defines common rules governing export control of military goods and technology as well as dual use goods and technology with military end use (OJ EC L 335 of 13 December 2008). An export license will be issued if it is found that an export is consistent with the criteria. Furthermore, the MFA has a duty to consult with other EU member states that have denied comparable applications. In the course of such consultations it will be considered whether any similarity exists between the applications. This procedure contributes to the European level playing field, because in comparable instances EU member states have to incorporate another Member State's denial into their own analysis.

In all cases, licenses for the export of strategic goods are granted or refused by the Netherlands Central Licensing Office on behalf of the Minister for Foreign Trade and Development Cooperation, who is responsible for this matter.

- what other authorities are involved and what is their function?

Customs / Central Import and Export Office (CDIU)

Companies or individuals intending to export or re-export goods and technology appearing on the list of military or dual-use goods, or to provide strategic services, should apply for an export license at the Central Import and Export Office (Centrale Dienst voor In- and Uitvoer, CDIU). On behalf of the MFA, the CDIU processes a large portion of the applications. This applies in particular to applications for the export or re-export to the EU and NATO allies. The CDIU sends a relatively small number of license applications to the MFA for further assessment. The CDIU also assists in assessing the strategic nature of goods, and will provide further information on measures concerning strategic goods. The CDIU forms part of the Tax and Customs Administration (Belastingdienst/Douane) Department of the Ministry of Finance, and is mandated by MFA to grant export licenses. The CDIU processes the license applications for exports of military and dual-use goods. In all cases, licenses for the export of strategic goods are granted or refused by the CDIU on behalf of the Minister for Foreign Trade and Development Cooperation, who is responsible for this matter.

General Intelligence and Security Service (AIVD)

The investigation into proliferation of weapons of mass destruction falls under both the intelligence task and the security task of the General Intelligence and Security Service (AIVD). The AIVD supplies the MFA with information that is relevant for export control. In the case of special destinations, the AIVD is requested to supply data on the reliability of certain foreign organisations or individuals. Besides, the AIVD and MIVD have a shared unit for counter proliferation.

Military Intelligence and Security Service (MIVD)

The Military Intelligence and Security Service (MIVD) supplies intelligence and security information to the four branches of the Netherlands armed forces. Key starting points to the work of the MIVD consist of intelligence needs in support of peacetime operations and those made necessary by the sharp increase in international terrorism, cyber and hybrid threats. Monitoring supplies of military goods to other countries forms part of both the MIVD's security task and its intelligence task. The MIVD provides the MFA with information appropriate for export control policy. Besides, the MIVD and AIVD have a shared unit for counter proliferation.

- who deals with compliance?

Customs / Team POSS

Team POSS is part of Customs at the Ministry of Finance. Team POSS checks a company's compliance in the fields of chemical weapons and drugs precursors, strategic goods, and sanctions legislation (POSS). It provides support to the Customs' risk control organisation by organising customs controls, supplying input for risk analyses, and passing on relevant information. Team POSS conducts inspection visits to a large number of organisations each year, for example in order to check their compliance and to check their accounts. Should any irregularities be found, a warning may be issued or an official report drawn up. Team POSS and the MFA also escort OPCW inspections on Netherlands territory in the framework of the Chemical Weapons Convention.

Fiscal Information and Investigation Service (FIOD)

The investigation of punishable offences in the field of strategic goods is one of the duties of the FIOD. Should Customs detect any irregularities, it will report them to Team POSS. Should Team POSS consider an investigation to be desirable or necessary, it will report that to the FIOD. The latter will then decide whether an investigation is necessary. If the FIOD decides not to initiate an investigation, Team POSS will decide how to deal with an irregularity. In addition, the FIOD may initiate investigations on an autonomous basis, for example if they possess information pointing to irregularities.

5. Lists of conventional weaponry under national export controls and the basis for their control. If applicable, report changes and/or updates to the data provided in 1995.

The Netherlands uses the Common EU list of military goods (hereafter: EU Military List) as the national export controls list. The list is a translation of the internationally agreed Munitions List of the Wassenaar Arrangement. Examples of military goods are weapons, weapons systems, technology and software for such systems, and other goods designed specifically for military purposes. These goods are subdivided into items ML1 to ML22. These 22 items give detailed descriptions of military goods, generally including accessories and/or components and related goods.

6. Principles and national regulations on the destination or end-user of the good. Is there a complete *erga omnes* system or a published list of

- destinations of concern?

Prospective exports of conventional weapons are carefully assessed in political terms on a case-by-case basis, taking into account the nature of the goods, its end use and end-user, in line with the EU Common Position. Destinations of concern are not principally ruled out, and are not published a specific list. Occasionally, the processing of requests for export licenses to certain countries is suspended due to national policy considerations. This is communicated with our Parliament.

- embargoed countries?

For a list of embargoed countries, the web site <http://www.rijksoverheid.nl/onderwerpen/internationale-vrede-en-veiligheid/sancties> can be consulted. This website also has a hyperlink to a sanctions and embargoes web page maintained by the European Commission. All sanctions and embargoes mentioned on the EC website are incorporated in the Netherlands export policy.

- differentiation between destinations (e.g., is there any preferential treatment of (groups of) countries)?

Trade in military goods between the Benelux countries is not subject to licensing requirements. Transit movements, however, do have to be notified or require a license. In that respect, it should

be noted that when the definitive country of final destination of the goods is known to be a different one than Belgium or Luxembourg, a license for the export from the Netherlands to that third country via the Benelux must be requested in the Netherlands.

7. Requirements for the provision of an end-user certificate in an export licence application, or of non-re-exportation clauses, or of any other type of certification before and after delivery for conventional arms export contracts. If applicable, please specify any verification of the end-user certificate and/or non-re-exportation clauses before and after delivery.

Distinction is made between "systems" and "components" and between destinations, i.e. EU/NATO+ (Australia, New Zealand, Japan and Switzerland) and "other destinations". In general a non-re-exportation provision will apply to the transfer of "systems". Whether such a provision applies to the transfer of "components" depends on the circumstances. In general, for deliveries of components to system integrators in "EU/NATO+ destinations" an international import certificate (IIC) will be accepted as an adequate end-user assurance. For deliveries of components to system integrators in "other destinations" an end-user statement is required, but this end-user statement might include the possible re-exportation to certain third countries. If possible, such system integrator statements will be supplemented by end-user statements of the clients of the system integrator.

Under normal circumstances, the contract for the delivery of systems will contain a non-re-exportation clause or a clause establishing the obligation to require prior authorisation from the Netherlands export control authorities for any re-sale. In some cases, such a clause will also be included in the end-user statement. Unless specific third countries are exempted from the non-re-exportation clause or "only allowed after prior authorisation" clause, these clauses will apply to all third country destinations. Post-export implementation consists of a set of procedures to assess requests for the authorisation of a resale or re-exportation. Enforcement might include post-shipment checks.

8. National definition of transit and transshipment (including free zones) of conventional arms, together with associated national legislation and compliance procedures.

Since August 1st, 2008 the controls on the export from and transit through the Netherlands of military goods is based on the General Customs Law, the Decree on strategic goods and the Implementation order on strategic goods. The goal of the transit controls is to enable the government to get a better insight into the type and size of transit transactions of military goods through the Netherlands and to be able to act when a transaction is deemed undesirable.

In principle, all transit transactions of military goods through the Netherlands require a licence from the Netherlands Export Control Authorities, similar to the license requirement in case of export. Whereas transit transactions of military goods originating from and/or destined for Australia, Japan, New Zealand, Switzerland, Member States of the European Union or NATO allies used to be exempted from the transit license requirement, this (main) exemption has recently been constrained. Since July 1st, 2012 the distinction between transit and transshipment has been introduced for those transit shipments. Currently all transit shipments originating from and/or destined for those countries mentioned above that are transshipped in the Netherlands do require a transit licence and are no longer exempted from the transit license requirement. An exemption to this extension of the transit licence requirement is made for intra-EU transit; transit shipments that originate from and/or are destined for a Member State of the European Union. So except for the intracommunity transit, all transit shipment that is transshipped in the Netherlands currently requires a transit licence. For the transit shipments, which are exempted from the transit licence requirement, a notification is still required.

Furthermore, a limited number of transit transactions are exempt from both the transit licence and the transit notification requirements, regardless of whether the shipments are transshipped in the Netherlands. These are transit transactions of defense material owned by and destined for Netherlands or NATO armed forces, Joint Force Command or the European Space Agency, or transactions of military vehicles used by a foreign armed force with the purpose of using them in events such as state visits, naval reviews or aviation demonstrations.

9. The procedures governing companies wishing to export arms. Are companies obliged to seek official governmental authority to enter into contract negotiations or to sign contracts with foreign customers?

No.

10. Policy on the revocation of export licenses once they have been approved; please list any published regulations.

Revocation is a legal possibility, but the Netherlands generally follows EU policy for sanctions. The legal basis for export controls in the Netherlands is described under item 2.

11. The penal and administrative implications for any exporter failing to comply with national controls. If applicable, report changes and/or updates to the data provided in 1995.

The Economic Offences Act (Wet op de economische delicten) defines the powers of the Customs Service and the Fiscal Information and Investigation Service (FIOD) with regard to undertaking investigations, and the sentences applicable to offences against the export regulations. Such offences are not subject to the penalty regime of the General Customs Act; they are designated as economic offences and carry penalties of up to six years imprisonment.

12. Any circumstances in which the export of arms does not require an export licence.

Some transactions are exempted from both the licensing and reporting requirements. These are transit transactions of defence material owned by and destined for Netherlands or NATO troops, AFCENT headquarters or the European Space Agency, or transactions of military vehicles owned or used by an army with the purpose of storing the vehicles or for using them in events such as state visits, naval reviews or aviation demonstrations.

13. Licenses for temporary export (e.g., demonstrations or testing), the period allowed and any special conditions attached to the licence, including verification of return procedures.

Temporary exports also require an export licence and usually carry the condition of re-import within six months.

14. Licence documents and any standard conditions attached to it (copies to be provided).

Attached are five copies of example of export licenses (in Dutch):

1. Individual license for the export of military goods within the EU;
2. Individual license for the export of military goods outside of the EU;
3. Individual license for the transit/transshipment of military goods;
4. Global license for the export of military goods within the EU;
5. Global license for the export of military goods outside of the EU.

15. Different types (e.g. individual, general, restricted, full, permanent, etc.) of licenses and what they are used for.

There are three types of licenses:

- Individual licenses for shipments to an end-user in one country only, for one or for different kinds of goods. Value and quantity of the shipment have to be indicated at the time of application. These licenses are valid for one year, but a renewal is possible.
- Global licenses, which are more flexible means of licensing that allow multiple shipments of a range of goods to several destinations, may be issued for transactions with Member States of the EU and/or for exports to Australia, Canada, Iceland, Japan, New Zealand, Norway, Switzerland, Turkey and the United States of America. These licenses are valid for one to three years, but a renewal is possible.
- General licenses, i.e. the Community General Licence and the National General Licence, allow exporters to export specific items to multiple countries under a simplified procedure. In order to use a general licence previous registration at the licensing office is required. As of June 2016 four National General Licenses are available for transfer of military goods within the European Union, two National General Licenses for transshipment of military goods and one National General License for exports from parties belonging to the F-35 Lightning II programme.

16. Advice given to exporters as to licensability, such as the likelihood of approval for a possible transaction.

To apply for an export licence, an exporter is required to present the contract relevant to that particular export transaction. In the event that - prior to signing a contract or even prior to entering into commercial negotiations - an exporter wants to have an indication as to whether a licence might be granted or not, he can request such an indication (sondage). In order to do so, the exporter should make available (in writing) all relevant information (destination, end-user, and an accurate description of the goods to be exported). The request is then processed in the same way as a licence application. If the request is assessed positively, a letter is provided, stating that the Netherlands export control authorities would grant a licence if the prevailing circumstances are unchanged at that the of the formal application. The letter also always states that the authorities have the right to come to a different assessment if the situation in the country of destination changes significantly.

17. The average number of export licenses issued annually and the staff engaged in the export licensing procedure.

On average, 1.000 licenses for exports of military goods are issued annually. Approximately thirty people are engaged in the relevant licensing procedure.

18. Any other relevant information pertaining to the export of conventional arms and related technology, e.g., additional laws, reports to Parliament, special procedures for certain goods.

Transparency and reporting is an important element of Netherlands export procedures for conventional arms. The Netherlands government is transparent and open about the export from, and the transit of strategic goods through, the Netherlands. All links to public national and international reporting instruments are given on the website below (in Dutch):

<https://www.rijksoverheid.nl/onderwerpen/exportcontrole-strategische-goederen/rapportages-dual-use-en-militaire-goederen>.

Annual Report

The Annual (national) Report on arms export policy is translated into English. The English versions can be found at <https://www.government.nl/topics/export-controls-of-strategic-goods/documents/reports/2017/06/01/archive-annual-reports-arms-export-policy>.

These Reports contain information on the development of the Netherlands arms export policy, as well as data on the licenses issued and the license applications denied. The Annual Reports,

- summarise the principles and procedures of the Netherlands arms export policy for the relevant year;
- describe developments relating to transparency;
- outline the Netherlands defence-related industry;
- describe developments within the EU relevant to the arms export policy and efforts in the field of arms control with specific reference to the issue of small arms and light weapons.

The Reports include appendices with tables and statistics on several aspects of the Netherlands arms export policy.

Monthly Reports (only in Dutch)

In addition to the Annual Reports, the Dutch language section also contains monthly reports with information on all licenses granted for the export of strategic goods. These provide information on the type of licenses granted, the kind of goods involved, and the final destination of the goods. Moreover, monthly reports on the notifications provided on the transit of military goods through the Netherlands, as well as individual data on all licenses issued for the export of dual-use items are available.

Individual letters to Parliament (only in Dutch)

In some cases, the Netherlands Parliament is informed via a letter about decisions on license applications within two weeks after the license was issued. This applies when a license application fulfils the following criteria:

- The total value exceeds 2 million euros;
- It concerns a new application (not an extension of a previously issued license);

- It concerns complete systems (e.g. complete radar systems);
- The country of final destination is not part of EU/NATO+.

Goods which are redundant as a consequence of the restructuring of the Netherlands armed forces, or technically and/or operationally obsolete, will be disposed of. According to Dutch law, the Ministry of Finance (State Property Department) takes care of the sale of all excess state property, including Defense material.

Non-strategic goods such as most lorries and jeeps are in principle sold via public tender. The sale of strategic goods such as battle tanks, armored vehicles, warships and combat aircraft is discussed in the

Committee for the Sale of Defense Equipment (CSDE) in which the Ministries of Defense, Finance, and Foreign Affairs are represented. Strategic goods will, within the framework of Netherlands arms export policy, only be sold to the governments of other countries – whether or not through selected private companies – or to the original manufacturer. Strategic goods are offered to other countries by an illustrated brochure which is distributed through the Netherlands embassies and the Defense attachés.

Regarding the sale of strategic goods, the Ministry of Defense is mandated to enter into contracting negotiations with interested governments, after the preliminary approval of the CSDE. Final negotiations take place in the presence of the Director State Property Movable Goods of the Ministry of Finance, who represents the State of the Netherlands in the contract to be concluded.

All goods will be delivered in the condition “as is, where is”. No guarantees are given. Nevertheless, the rendering of services such as overhaul and training is negotiable. For those services cost price will be charged. Furthermore, for strategic goods an end-user statement is required.

International co-operation

For years, Netherlands national defense policy has been aimed at intensifying co-operation to harmonise operational requirements, to strengthen standardisation and interoperability, and to improve cooperation in the fields of logistics, command, control and information activities. Experience over the years has shown that the chances for successful co-operation are most significant on a bi- or trilateral basis. It may be obvious that in the field of armaments co-operation, the Netherlands then seeks to cooperate in particular with those nations with which it already has close ties operationally and logistically, or with those nations with which it will cooperate on the basis of future tasks.

The Netherlands aims to establish a sound European defense technological and industrial base, on the basis of a level playing field where each nation can contribute with a view to future tasks.

Exports of classified military equipment

If a Dutch company wants to export military equipment, an armed forces consultancy procedure determines whether the equipment is classified. When the specific equipment has a classification, a Memorandum of Understanding (MoU) has to be agreed upon between the Netherlands Minister of Defense and their counterpart in the country involved, concerning the protection of classified information. When it is not possible to reach agreement on a MoU, the Netherlands Ministry of Defense stipulates that an end user statement must be agreed upon, with more or less the same conditions attached as the MoU.

19. Are all guidelines governing conventional arms transfers nationally published?

The guidelines governing the transfers of conventional arms are laid down in the nationally published “Arms Export Policy Paper”, and the “Manual for Strategic Goods”. The legal basis for export controls in the Netherlands is described under item 2.

NB: Participating States that do not export conventional arms and related technology will so inform all other participating States.