

Country Profile regarding the National Implementation of the Chemical Weapons Convention

Finland

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Introduction

Finland ratified the Chemical Weapons Convention (CWC) on 7 February 1995.¹ In Finland an international treaty becomes national law after it is approved or ratified by the President or the Parliament. When the CWC enters into force for Finland the information will be published in a decree in the code of statutes and the translated Convention text (Finnish and Swedish) is published with the decree in the Official Gazette.

Since Finland applies the dualistic system in implementing international treaties, the CWC will not automatically be part of Finland's legislation. The CWC has to be incorporated into Finnish law through decrees that explain how to apply the Convention.² When the CWC enters into force, its provisions may not contradict already existing legislation. Thus, legislation had to be amended to comply with the provisions in the CWC.

In general, the required legislation can be amended by creating new acts or existing acts may be amended to correspond with the text of an international treaty. Finland has chosen to create a new act, i.e., the Act on the Approval of Certain Provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and on its Application (CWC-Act) and amended and/or kept existing acts. Other already existing acts (and decrees) which are of concern to the implementation of the CWC are, for example, the Penal Code and the Chemicals Act,³ the Act on the Export and Transit of Defence Material,⁴ Customs Act,⁵ the Act on Safeguarding the Foreign Trade and Economic Growth,⁶ and the Decree on Export Control of Certain Items.⁷ The latter ones concern export and import. The Penal Code prohibits whomsoever to use, develop, produce or otherwise acquire, stockpile or retain or transfer CW, or engage in a military preparation to use CW.⁸ The CWC-Act enters into force on the date stipulated by decree. However, measures needed to prepare the enforcement of the CWC-Act can be taken before the act enters into force.⁹

¹ Finland became the 23d ratification State.

² As for example which chemicals that are included, obligations for the industry.

³ Kemikalielag, 14. 8. 1989/744 and its decree Kemikalieförordning, 29. 6. 1990/620.

⁴ Lag om export och transitering av försvarsmateriel, 9. 3. 1990/242 and its decree förordning om export och transitering av försvarsmateriel, 24. 3. 1995.

⁵ Tullag, 29. 12. 1994.

⁶ Lagen om tryggnad av landets ekonomiska tillväxt, 154/74.

⁷ Förordning om export kontroll av vissa varor, 431/94 (amended 870/95).

⁸ Penal Code, Chapter 13 Section 4 a; enters into force on the date stipulated by decree.

⁹ Section 14, CWC-Act.

The relations of Finland with foreign powers are governed by the President of Finland. However, treaties concluded with other foreign states must be approved by Parliament if they contain provisions within the legislative sphere or if the consent of Parliament is otherwise required by Finland's constitution.¹⁰

The Foreign Affairs Committee ordinarily prepares the matters relating to the ratification or introduction of a treaty.¹¹ The Government has issued a bill proposal concerning provisions in the CWC belonging to the legislative sphere (for example: setting up a National Authority, provisions for declarations, verification) to the Parliament for approval. After the approval of the CWC-Act by the Parliament Finland's President ratified the CWC.¹²

At the point when the Finnish and Swedish CWC text is published in the Official Gazette, it is ranked equally with other national legislation and has to be applied in accordance with its provisions therein. When these measures are taken the CWC is equally ranked with national law as well.

In keeping with international norms, Finland does not possess any chemical weapons (CW) and has no intention to get any.¹³ Thus, the obligations under the CWC will mainly refer to Article VI i.e., non-prohibited activities. Finland has not a substantial chemical industry producing chemicals or precursors listed in Schedules 1-3 under the CWC. However, a few of the listed chemicals are in limited use at some facilities¹⁴ and additionally, Finland imports some Schedule 3 chemicals.¹⁵ In all, Finland possesses around 450 chemical industry companies.¹⁶ Only about 10 of these companies are affected by the CWC. However, there are plant sites producing unscheduled discrete organic chemicals (DOC) at thresholds requiring declarations.¹⁷ The number of declarations may differ from year to year depending on the quantity of production.¹⁸

Main provisions

General aspects

As Finland does not possess any chemical weapons nor has an extensive chemical industry it will foremost be concerned with provisions under Article VI of the CWC, which deals with activities not prohibited under the Convention and Article IX, possible challenge inspections.

Finland has created a new act, the CWC-Act, and also uses existing acts and decrees to nationally implement the CWC. The CWC-Act is approved by Parliament and will enter into force at a date stipulated in decree (most certainly at the same date as the CWC enters into force). The CWC-Act contains provisions regarding responsible authorities, exchange of information, licenses, inspections, confidentiality

¹⁰ Constitution Act of Finland (17 July 1919/94), Section 33; However, the Constitution does not define when a treaty comprises areas which belongs to the legislative sphere.

¹¹ Parliament Act (13 January 1928/7) Section 48.

¹² 7 Feb. 1995.

¹³ Gov. Bill proposal, 2.3. p. 3.

¹⁴ Gov. Bill proposal, 2.4. p. 5.

¹⁵ Gov. Bill proposal, p. 11.

¹⁶ The production was 40 million Finnish marks in 1994.

¹⁷ From about five facilities.

¹⁸ It concerns about five plant sites. The production may be below the thresholds in the CWC required for declarations.

and import and export of chemicals. The police, the supervisory authorities referred to in the Chemicals Act¹⁹ and, in respect of import and export of chemicals, the National Board of Customs and the Border Guard Service shall provide executive assistance for the supervision of compliance with, and the implementation of, the CWC-Act and rules and regulations issued under it.²⁰

The National Authority

The Ministry of Foreign Affairs shall be responsible for the national implementation of the Convention. It shall further serve as the National Authority (NA) referred to under Article VII of the Convention. The Finnish NA shall operate as the point of liaison with the Organisation for the Prohibition of Chemical Weapons (OPCW), as well as with other States Parties.²¹ However, as the Ministry of Foreign Affairs does not possess the means that are required in the implementation process, such as the carrying out of inspections and collection of information from the chemical industry, it shall be assisted by the Finnish Institute for Verification of the Chemical Weapons Convention at the University of Helsinki (VERIFIN).²² The VERIFIN shall foremost be concerned with verification, analysis of information and research.

The Ministry of Trade and Industry shall be responsible for the supervision of export products²³ other than defence materials, which is the responsibility of the Ministry of Defence.²⁴ The NA will further be assisted by the National Agency for Medicines which will function as a licensing authority referred to in Section 4 of the CWC-Act.²⁵ All these authorities are the supervisory authorities under the CWC-Act.

Collection of Information

As regards the collection of information, sections 3 and 7 of the CWC-Act are of main concern. Section 3 enacts that the supervisory authorities,²⁶ notwithstanding the provisions of confidentiality, shall have the right to obtain information from other authorities when necessary for supervision in conformity with the Convention or this Act. The reason behind this provision is to avoid any overlapping.²⁷ Relevant information on chemicals and the chemical industry is already being collected by different authorities. The information is, for example, found in the chemicals list referred to in the Chemicals Act.²⁸ The chemicals list and its subfiles contain information on: (1) production,²⁹ (2) new materials,³⁰ (3) poison chemicals,³¹ (4)

¹⁹ Kemikalielagen, 744/89.

²⁰ CWC-Act, Section 6.

²¹ CWC-Act, Section 2.

²² CWC-Act, Section 2 subsection 2; Helsingfors universitets verifikationsinstitut för konventionen mot kemiska vapen. It has, together with its predecessor, the CW project more than 20 years of experience as regards verification of CW and research in that field.

²³ CWC-Act, Section 2 subsection 3.

²⁴ *ibid.*, Act 242/90 on the Export and Transit of Defence Material, amended by 197/95, Section 2.

²⁵ Government Bill proposal, p 15.

²⁶ The Ministry of Foreign Affairs, the VERIFIN, the Ministry of Trade and Industry and the Ministry of Defence.

²⁷ Gov. Bill proposal, p. 15.

²⁸ Kemikalielagen, 744/89, Section 58 and p. 15 in the Gov. Bill proposal.

²⁹ Responsibility of the Board on Industrial Welfare Safety.

³⁰ Responsibility of the Social and Health Welfare Board.

³¹ *Ibid.*

chemicals that are used for protective purposes,³² (5) licenses to use chemicals and reports on any changes in the use of chemicals.³³

Section 2 Subsection 2 of the CWC-Act states that the supervisory authorities³⁴ shall have the right, notwithstanding the provisions of confidentiality, to forward information to the OPCW³⁵ and other States Parties.³⁶ The intention is that the collected information shall be kept confidential to the extent possible.

The obligation to submit information is further treated in Section 7 of the CWC-Act, which reads as follows:

‘Whosoever, in the performance of work connected with this Act or with the application of the Convention, has obtained information regarding professional or business secret of another person, shall not reveal or use such information without consent. Information received from the Organisation for the Prohibition of Chemical weapons and defined as confidential shall not be revealed or used contrary to the Convention.’

Continuous relevant information on the chemical industry is required to the success of the Convention. Moreover, it is anticipated that annual declarations on production, use, consumption exports, imports etc. of scheduled (and other) chemicals are to be submitted to the OPCW. It is the responsibility of users of the relevant chemicals to forward such information to the VERIFIN referred to in section 2.³⁷ Further, Section 7 suggests that more detailed provisions regarding the submission of chemicals should be provided by decree. Up to date there is no decree on this subject.

Verification Inspections

The Finnish CWC-Act has one section regulating inspections, both routine and challenge inspections. It also provides for national inspections. The Government Bill Proposal also spells out the need for Facility Agreements.

Routine Inspections/Challenge Inspections

The Convention addresses provisions concerning routine and challenge inspections. Routine inspections concern chemical plants, plant sites, laboratories etc. of which information has been submitted to the OPCW. Each State Party also has the right to demand challenge inspections on another State Party's territory. Routine inspections as well as challenge inspections shall be executed by the OPCW.

Section 5 of the CWC-Act prescribes both challenge and routine inspections. It will be described below what measures the CWC-Act proposes in order to comply with the Convention. Representatives from the Ministry of Foreign Affairs and/or the VERIFIN, inspectors from the OPCW (and the Observer referred to in Article IX, paragraph 12 of the CWC) have the right to carry out inspections, be it routine or challenge. To ensure the survival of the Convention in Finland the NA will have the

³² Responsibility of the Environment and Water Board.

³³ Responsibility of the Technical Control Central for Licenses and Reports of Changes.

³⁴ The Ministry of Foreign Affairs, the VERIFIN, the Ministry of Trade and Industry and the Ministry of Defence.

³⁵ Art. VIII CWC.

³⁶ Art. VII CWC.

³⁷ Ibid.

right to demand national inspections in order to supervise the law.³⁸ However, such an inspection has to be executed with respect of the principles spelled out in the Convention and in Section 5 Subsection 1 of the CWC-Act.³⁹ The need for these inspections will probably not be significant in Finland.⁴⁰

Section 5 Subsection 1 of the CWC-Act suggests directions to conduct inspections in accordance with the Convention, that is routine inspections⁴¹ and challenge inspections.⁴² The following presents detailed information on the provisions regarding the inspection rights. The inspectors shall

‘have access to an area, a building, a factory or other facility which may be subject to an inspection under the Convention.’⁴³

As regards routine inspections the inspection areas are decided upon in advance by a facility agreement between the inspected state (i.e., the NA) and the OPCW or based on the declarations submitted by the state. But a state shall have the right to protect confidential information that is not connected to CW (also in cases of a challenge inspection).⁴⁴ In connection to inspections, be it routine or challenge, inspectors shall further have the right:

‘to access to an area, a building, a factory or other facility which may be subject to an inspection under the Convention.’⁴⁵

‘to stop and inspect goods traffic to and from the inspected site.’⁴⁶

This can be done by traffic registration, photographing of vehicles, or chemical sensors.⁴⁷

Section 5 subsection 1 (3) gives the right:

‘to receive or take samples and photographs or other visual records of the inspection site.’⁴⁸

This is to be made either by the personal at the inspection site or by representatives of a State Party. Samples and photographing shall, in order to guarantee that an inspection is made to the extent required by the Convention, be made by the inspection team.

According to Section 5 Subsection 1 (4) the right is given

‘to bring to the inspection site measuring devices or other technical devices necessary for the acquisition or registration of information, and to use such devices therein.’

The inspection team may also use devices of the inspected facility.⁴⁹

³⁸ CWC-Act Section 5 subsection 2. The national inspectors have the same right as international inspectors as concerns routine and challenge inspections. The intention is to conduct national routine inspections to verify declarations. But it is not foreseen to conduct national challenge inspections. This is an explanation to industry which rights the inspectors will have.

³⁹ Ibid.

⁴⁰ Gov. Bill proposal, p. 18.

⁴¹ Article IV CWC.

⁴² Article IX CWC.

⁴³ CWC-Act Section 5. Subsection 1.

⁴⁴ Gov. Bill proposal, p. 17.

⁴⁵ Section 5 subsection 1 (1).

⁴⁶ Section 5. Subsection 1 (2).

⁴⁷ Gov. Bill proposal, p. 17.

⁴⁸ Ibid. CWC-Act, Section 5 Subsection 3.

⁴⁹ Gov. Bill proposal, p. 18.

Subsection 1 (5) finally suggests that the inspectors shall have the right “to obtain from the establishment to be inspected or from a person in its employ the information necessary for the carrying out of the inspection.’

The management of the facility or its employees shall, if possible, have the right to express its opinion before the inspection is carried out.⁵⁰ If the objectives, obligations or time frames of an inspection would be jeopardised by this right, the management or its employees shall not be heard.⁵¹

Inspections are not allowed to be carried out in private homes.⁵² However, according to the Act on Means of Coercion,⁵³ a house-visitation may be provided for, if there is a suspicion that any activity prohibited under the CWC is carried out there.⁵⁴

Additionally, Finnish law requires the inspected facilities to pay the Inspected State Party inspection costs.

Facility Agreements and Confidential Business Information

None or a very limited number of facilities are required to conclude a Facility Agreement. This is a consequence of Finland’s nature as regards chemical industry. Because of the comprehensive powers anticipated by the Convention, certain limitations as regards inspection rights have been suggested in the Government Bill Proposal in order to diminish inconveniences of inspections. However, inspections must always correspond with the provisions under the Convention.⁵⁵ The Government Bill Proposal addresses the facility agreement issue indirectly. As regards routine inspections, the facility agreement sets out in advance the exact areas to be inspected. The facility agreement should provide for detailed provisions concerning the protection of sensitive premises and installations and confidential information.⁵⁶

As regards confidential business information (CBI) during a challenge inspection, there has to be a right for the inspected facility to protect installations or machines, as for example shroud or take away confidential information, which is not related to CW, or if the protected information is the reason of the challenge inspection.⁵⁷

Activities that Require Permission

Section 4 for of the CWC-Act enacts that any activities involving Schedule 1 chemicals require a licence. Chemicals under Schedule 1 may only be used for research, medical and pharmaceutical reasons and protective purposes. The licence requires that certain quantities are not exceeded. Also, there are strict export limitations on these chemicals.

The Finnish National Defence Research Establishment is the only body using Schedule 1 chemicals (only for research purposes). It is suggested that a decree shall

⁵⁰ CWC-Act Section 5 subsection 2

⁵¹ Act on Administrative Procedures (lagen om förvaltningsförfarande), Section 15.

⁵² CWC-Act Section 5 subsection 3.

⁵³ Lagen om tvångsmedel, Chapter 5.

⁵⁴ Gov. Bill proposal, p. 18.

⁵⁵ Gov. Bill proposal, p. 16.

⁵⁶ Gov. Bill proposal, p. 17.

⁵⁷ Ibid.

be enacted to give the National Defence Research Establishment the status of a 'single small-scale facility'.⁵⁸

Schedule 1 chemicals are also used for research, medical and pharmaceutical purposes. However, the quantities do not exceed the thresholds under the Convention (less than 100 g annually). In order to ensure continued observations of the declaration obligations and the approval of facilities, the Government Bill proposes that production, acquisition, storage, or other usage of Schedule 1 chemicals shall require licence in all cases where the amount exceeds annually 100 grams per facility and establishment.⁵⁹

The National Agency for Medicines shall be the responsible authority for the permission of licenses. It is suggested that a decree should be enacted which provides for detailed provisions regarding the conditions for licenses and its procedures.⁶⁰ One condition for receiving a licence should be that the supervisory authorities mentioned in Section 2 (CWC-Act) have to recommend the permission of the request.

Export Controls

The Convention regulates exports and imports of chemicals that are essential to CW production. Finland is party to other international arrangements, which already limits exports and imports of chemicals.⁶¹ Applicable legislation is the Act on Safeguarding the Foreign Trade and Economic Growth.⁶² This Act gives a general mandate for export and transit controls of products and related services as specified in the subordinate Decree on Export of Certain Items⁶³ and in the Decision of the Ministry of Trade and Industry (MTI) under the Decree. The Decree and the Decision, *inter alia*, cover the dual-use items controlled by the CWC and Australia Group. The type of control is mandatory export licenses for products and related technologies specified in the MTI Decision (also transit of these items through Finland is controlled), established rules for end-use/end-user clarification with a possibility for post-shipment controls, penalties and a catch-all clause. The export licenses are given for a certain time period and conditions for the use of the chemicals may be required. The Ministry of Trade and Industry is the responsibly authority to grant the export licenses.

Further, Finland has in force export controls which are based on the Act on the Export and Transit of Defence Materiel, the accompanying Decree on the Export and Transit of Defence Materiel and also the Decision of the Ministry of Defence on the Precursors of Chemical Warfare Agents.⁶⁴ The Act contains general provisions on licensing procedures, sanctions and supervision, the Decree gives the categories of defence materiel and the Decision contains the materiel to be controlled under the Decree. The main function is to regulate and control the export and transit of conventional arms. CW materiel has been incorporated and provisions on licensing,

⁵⁸ Gov. Bill proposal, p. 16.

⁵⁹ The definition of 'verksamhetsidkare' shall correspond to that of the Chemicals Act Section 14. '...Anyone who produces, imports, exports, stores, transfers, possesses, keeps or in any other sense referred to in the law deals with chemicals.'

⁶⁰ Gov. Bill proposal, p.16.

⁶¹ Finland became a member of the Australia Group in December 1991.

⁶² Lagen om tryggande av landets utrikeshandel och ekonomiska tillväxt, 157/74 amended 506/92 and 331/94.

⁶³ Förordning om exportkontroll av vissa varor, 431/94 amended 870/95.

⁶⁴ Lag om export och transitering av försvarsmateriel, 242/90 amended 197/95, Förordning om export och transitering av försvarsmateriel, 267/90 amended 409/95, and the Decision of the Government as of 24 March 1995, 474/95 concerning general directives on export and transit of defence material.

sanctions and supervision are properly applicable for CW as well. The legislation is administered and implemented by the Ministry of Defence in consultation with the Minister of Foreign Affairs. It is supervised by the Customs Authority.⁶⁵

Finland already has extensive export controls. However, in order to comply with the Convention it has been suggested that provisions on the restrictions under the Convention, concerning exports and imports of chemicals should be enacted by decree.⁶⁶ Moreover, in order to avoid overlapping of export control regulations the provisions in the Act on Safeguarding the Foreign Trade and Economic Growth and in the Act on the Export and Transit of Defence Materiel and in the rules issued under them shall be applied to the import and export of chemicals governed by the Convention, where appropriate.⁶⁷

In case of violations of the export controls, measures will be taken under the Penal Code,⁶⁸ and the Act on the Export and Transit of Defence Materiel.⁶⁹ These penal provisions should not be applied where the crime is a violation against the prohibition of CW.⁷⁰

Penal Sanctions

The CWC anticipates that Member States shall prohibit all natural and legal persons anywhere on its territory or elsewhere under its jurisdiction and control from taking such actions prohibited under the Convention.⁷¹ A State Party has to initiate penal legislation relating to such activities.⁷²

At this moment Finnish penal legislation applies to infringements accomplished by Finnish citizens or foreigners permanently living in Finland regardless of where the offence has taken place.⁷³ It was suggested to introduce a so called double penalty, which implies that an offence shall be penalised according to the law (1) of Finland, if the perpetrator is Finnish citizen or foreigner living in Finland and (2) where the infringement has taken place as well. As not all states have ratified the Convention, the double penalty would not fulfil the standards of the Convention, since only State Parties are subject to the Convention.⁷⁴

To fulfil the requirements of the Convention, it is suggested that regulations concerning the applicability of the Finnish penal legislation shall be complemented so that the 'Principle of Universality' shall be applicable to violations of the Convention.⁷⁵ Infringements of the Convention have to be incorporated in the Penal Code (Chapter 1, Section 3 subsection 2) which lists violations under the CWC by

⁶⁵Finnish Export Control for Defence Material.

⁶⁶ CWC-Act. Section 10. Subsection 1.

⁶⁷ Ibid. Subsection 2.

⁶⁸ Chapter 46 Sections 1-3 (fines or imprisonment for 4 months up to 4 years); and also see the Act on Safeguarding the Foreign Trade and Economic Growth Section 8; Sanctions for violations of dual-use export controls.

⁶⁹ Section 7, fines or maximum 4 years of imprisonment.

⁷⁰ Penal Code, Chapter 13 and Section 4 (a); enters into force at the point decided by decree.

⁷¹ Article VII 1 (a); Article I CWC states which activities it prohibits: A Contracting Party must not under any circumstances use CW (I.1 b), develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, CW to anyone (I.1. b), engage in military preparations to use CW (I.1. c), assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention (I.1. d), use riot control agents as a method of warfare (I.5).

⁷² Ibid.

⁷³ Penal Code, Chapter 1 Section 2.

⁷⁴ Government Bill p. 21-22.

⁷⁵ Ibid. p. 21, implying that the jurisdiction of a state is broadened to crimes independent where the crime took place, perpetrator and the legislation of the place in which the crime was committed.

which Finnish legislation may be applicable even if the perpetrator is a foreigner and the action is not criminal according to the legislation of the state where the crime took place. The complement to Chapter 1, Section 3, subsection 2, paragraph 1 reads as follows:

‘...a foreigner may be sentenced according to Finnish legislation even if the crime is not criminalized at the perpetrator place if the crime isviolation of the prohibition of CW.’⁷⁶

The suggested revision implies that Finnish penal legislation would be applicable to violations of the Convention regardless of where the violation took place, the citizenship of the perpetrator, and of the penal legislation of the other state.⁷⁷

Conclusions

Finland has issued a new CWC-Act including provisions on responsibly authorities, exchange of information, licenses, inspections, confidentiality and export and import of chemicals. A decree with detailed provisions will follow. The entering into force of the CWC-Act will be decided by decree (on the same date as the CWC enters into force). Other important act as concerns export controls are the Act on Safeguarding the Foreign Trade and Economic Growth (and the Decree on Export of Certain Items) and the Act on the Export and Transit of Defence Material. The Ministry of Trade and Industry and the Ministry of Defence are responsible for export supervision.

The Ministry of Foreign Affairs is appointed the National Authority and will be the point of liaison with the OPCW. However, the day-to-day work will be accomplished by the VERIFIN.

The collection of information on chemicals and the chemical industry is already taking place in Finland. The information should be forwarded to the VERIFIN which at the entering into force of the CWC will forward it to the OPCW. Detailed provisions will be provided for by decree.

The CWC-Act does not make a distinction in the procedure of challenge and routine inspections.

The CWC-Act does not explicitly spell out the need for Facility Agreements. However, Facility Agreements are mentioned in the Government Bill Proposal. The reason for this, is probably that Finland does not have a substantial chemical industry and none or very few of these facilities require the conclusion of Facility Agreements.

To ensure the survival of the CWC the National Authority has the right to demand for national inspections.

⁷⁶ Penal Code Chapter 1. Section 3. subsection 2

⁷⁷ Ibid.