

STRATEGIC GOODS COMMISSION ACTIVITY REPORT 2011

The Strategic Goods Commission is a body established by the Ministry of Foreign Affairs for the licensing and supervision of strategic goods to ensure the functioning of the strategic goods control system and discuss issues related to strategic goods. It is composed of representatives of the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of Economic Affairs and Communications, the Security Police Board, the Police and Border Guard Board, and the Tax and Customs Board. According to the rules of procedure of the Commission, the Commission submits an annual activity report to the Government of the Republic, which provides an overview of international events and developments in the area of export control and strategic goods control as well as measures to improve the control exercised by the state. The statistical data about the activity of the Commission have been attached to the activity report.

I Overview of the events and developments on the international arena in the area of export control and strategic goods control and the activity of the Strategic Goods Commission in 2011

The purpose of international export control is to monitor the supply of military and dual-use goods to contribute to and ensure national and international stability and security. The growing importance of export control goes hand in hand with the need to prevent terrorism and the proliferation of weapons of mass destruction in the world.

Estonia is a participating state of three international export control regimes – Wassenaar Arrangement (on Export Controls for Conventional Arms and Dual-Use Goods and Technologies), Nuclear Suppliers Group (on the control of nuclear materials) and the Australia Group (fighting the spread of chemical and biological weapons). In 2011, Estonia participated in the meetings of the General Working Group and the Plenary of the Wassenaar Arrangement in Vienna, in the meetings of the consultative committee of the Nuclear Suppliers Group in Vienna and the Plenary of the Australia Group in Paris. Estonia has fulfilled the criteria for joining the Missile Technology Control Regime (control of the proliferation of missile technology and missiles), but the participating states have not yet reached a consensus on admitting new members (besides Estonia, 7 EU states are awaiting membership status) and therefore, Estonia's accession has been postponed.

In 2011, three new guidelines were agreed within the framework of the Wassenaar Arrangement: best practice guidelines on subsequent transfer (re-export) controls for conventional weapons systems, according to which the importing countries shall not supply weapons and technology to third countries without the consent of the exporting country; elements for controlling transportation of conventional arms between third countries, and best practice guidelines on internal compliance programmes for an undertaking involved in dual-use goods and technologies. The wording of one of the main documents concerning potentially destabilising accumulations of conventional weapons was improved and the lists of goods were updated. At the meetings of the Nuclear Suppliers Group and the Australia Group, changes in the security environment and updating the lists of goods were discussed.

In addition to obligations arising from international arrangements, the Strategic Goods Commission also controls trade in certain goods that could be used for capital punishment,

torture or other cruel, inhuman or degrading treatment or punishment. The list of goods is established by Council Regulation (EC) No 1236/2005, which is directly applicable in Estonia. In 2011, discussions were held in the European Union about making amendments to Council Regulation No 1236/2005 to add transit and brokering control measures and supplementing the list of goods. The list of dual-use goods of the European Union (Regulation No 428/2009) is also directly applicable in Estonia.

In 2011, Estonia transposed Directive 2009/43 of the European Parliament and of the Council, which simplifies the terms and conditions of transfers of defence-related products within the Community. The aim of the directive is to simplify the rules and procedures applicable to intra-Community transfers of defence-related products in order to ensure better competitiveness and proper functioning of the internal market.

During the year, the representatives of the Strategic Goods Commission actively participated in all meetings of the European Union working groups that deal with in export control issues – the Working Party on Conventional Arms Exports (COARM) and the Working Party on Dual-Use Goods (WPDUG). The Coordination group established pursuant to article 23 of Regulation No 428/2009 of the European Union sought solutions for improving the implementation of current control requirements. New general licences for dual-use goods of the European Union were developed (there are now six general licences in the European Union). In addition, the Iran sanctions list of goods was amended, additional control measures against Syria were discussed, issues relating to the transposition on a national level of the simplifying terms and conditions of transfers of defence-related products within the Community and other important questions were addressed.

The representatives of the Strategic Goods Commission participated in drafting a regulation of the European Parliament and of the Council to implement Article 10 of the United Nations Firearms Protocol to establish export licenses as well as the import and transit measures of firearms, their parts, components and ammunition. Estonia ratified the UN Convention against Transnational Organized Crime and its Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition in 2002; the Protocol entered into force in 2005. With the new regulation of the European Union, the article of this Protocol on export will be implemented on the export of firearms for civilian use from the territory of the European Union, taking into account the EU measures in the fight against transnational crime and illicit trade in firearms. The Council adopted the regulation on 8 March 2012 and it is to be applied with effect from 30 September 2013.

In 2011, the preparations for the negotiations on the Arms Trade Treaty (ATT) within the framework of the United Nations continued. Estonia participated in the meetings of two Preparatory Committees established based on UN resolution 64/48 “Arms Trade Treaty” in New York. Currently, there are no conventions to regulate transfers of conventional arms on a global level and the United Nations Security Council embargoes are the only legally binding global restrictions on the deliveries of conventional arms. The international Arms Trade Treaty would be the first international treaty to regulate the import, export and transit of conventional arms on a global level and provide a common basis for decisions regarding arms transfers. The Arms Trade Treaty negotiations will be held at the UN diplomatic conference on 2–27 July 2012 in New York.

In June 2011, the European Commission launched a wide-ranging discussion on the EU system of dual-use goods subject to export control with the aim of reviewing and updating the system step-by-step. The reason is that the practical application of Council Regulation 428/2009 concerning the export control of dual-use items and determining additional measures falls largely within the competence of the Member States and the states have imposed different restrictions on and adopted favourable measures for exporters. Estonia consulted entrepreneurs, state authorities and dual-use goods experts in Estonia from July to September and compiled a document of its own views based on the collected opinions. In 2012, a report of the European Commission will be published on the outcomes of the discussion, after which proposals will be submitted to amend the dual-use goods regulation.

II New Strategic Goods Act and list of strategic goods

In 2011, a new Strategic Goods Act was adopted, transposing the changes made in the EU legislation and amending the current provisions of the act that had been in force since 2004. The work of the new draft act commenced in 2010 and the act came into force on 1 January 2012.

According to the new act, the principles of transfers of strategic goods will generally remain the same. However, some significant updates have been included:

- defence-related products may now be transferred within the European Union in a simplified procedure;
- the EU regulation on dual-use items added transit and brokering control measures of these goods;
- national general licenses for the transfer of defence-related products were introduced and the rules for the use of general licenses were specified;
- practical problems regarding the control of firearms and their components were resolved;
- possibility for demilitarisation of military goods (the Ministry of Defence will adopt a corresponding regulation in 2012) and excluding those items from the strategic goods controls was created;
- the current regulation was amended to ensure compliance with international requirements.

One of the major updates is related to the adoption of simplified rules and procedures applicable to the intra-Community transfers of defence-related products in order to ensure less bureaucracy for transfers of defence-related products within the European Union. The individual authorisations could be replaced by a general export licence on one side and certification of the recipient undertaking on the other side. The system is based on Directive 2009/43 of the European Parliament and of the Council, which simplifies the terms and conditions of transfers of defence-related products within the Community, the purpose of which is to strengthen the competitiveness of defence undertakings of the European Union. For the purpose of the directive, the possibility of simplified transfers is mainly envisaged for the transfers of components of whole products from one Member State to another Member State.

The second important change is resolving the discrepancy between the Weapons Act and the Strategic Goods Act that has caused problems in recent years in the licensing of transfers of arms and their components. Now the scope of regulation of both acts is clearer and the readers can better understand it.

Thirdly, the importance of general transfer licences will increase. Due to growing bureaucracy, export control for less sensitive transfers is increasingly focusing more on general cases instead of evaluating each case every time separately, i.e. the emphasis on transfers based on general licences will strengthen for less sensitive transfers and reliable undertakings (instead of individual licences). The resources that are freed will be redirected to follow-up checks and risk analysis. Ten types of general transfer licences for undertakings (4 defence-related products and 6 dual-use goods) are valid from 2012. The new act takes into account the needs resulting from the growing use of general licences and sets down appropriate provisions.

The strategic goods regulation deals with four types of goods (military goods, defence-related products, dual-use goods and goods used for the violation of human rights) and takes into account the specifics of these goods groups on three levels (national level, EU level and international export control level). The Strategic Goods Act takes into account the changes and developments in all these areas and on all levels unequivocally and clearly.

Of the lower level legislation of the Strategic Goods Act, the Strategic Goods List was most thoroughly updated. The strategic goods list was updated linguistically and the changes made in the regimes were included. The list of military goods was updated on 1 January 2012, taking into account the changes agreed upon in the international export control regimes and the list of military goods of the European Union, which will be transposed with the Council Common Position 2008/944. From 1 January 2012, the strategic goods list was supplemented with the list of defence-related products adopted by Commission Directive 2010/80.

Six lower level acts related to the Strategic Goods Act are:

- Lists of strategic goods (Regulation of the Government of the Republic)
- Statutes of the Strategic Goods Commission (Regulation of the Government of the Republic)
- Customs formalities and rules for notices to the Customs Authority (Regulation of the Government of the Republic)
- National general transfer licences are adopted, a new act (Order of the Government of the Republic)
- Strategic goods database, a new act (Regulation of the Minister of Foreign Affairs)
- Forms related to strategic goods (Regulation of the Minister of Foreign Affairs).

The commission also made several proposals in previous years for amending the Penal Code to bring the punishments for the strategic goods related offences in conformity with their harmfulness and international practice and to ensure efficient, proportional and dissuasive penalties. The Ministry of Justice decided that it was not expedient to make changes in the Penal Code in 2011, because of an ongoing general penalty analysis. The Strategic Goods Commission will continue to work with the Ministry of Justice to distinguish strategic goods penalties in the Penal Code in 2012.

III Increasing awareness concerning strategic goods in 2011

The Strategic Goods Commission pays full attention to awareness raising related to strategic goods among the clients of the commission – companies, scientific and educational institutions as well as state authorities.

In 2011, the representatives of the Strategic Goods Commission visited eight companies involved in strategic goods on the initiative of the Tax and Customs Board. The purpose of the visits was to introduce strategic goods control legislation and the Customs procedures with the aim of raising awareness and law-abidingness of the companies. During the period of 2007–2011, 38 companies all over Estonia were visited for the preventive purpose. These visits will continue in 2012.

An international seminar organised by the U.S. Department of Energy with the assistance of the Ministry of Foreign Affairs of Estonia on how to identify dual-use goods was held in May 2011 in Tallinn, attended by the employees of the Tax and Customs Board and the representatives of the Strategic Goods Commission. Estonian judges and prosecutors took part in the regional conference on the control of strategic goods in Riga held within the framework of the US Export Control and Related Border Security Assistance (EXBS) programme. The Tax and Customs Board organised three strategic goods trainings for its employees. Cooperation in the field of radiation control training has taken place since December 2010: the employees of the Tax and Customs Board have worked out a model for the employees of the Police and Border Guard Board and the Tax and Customs Board using the simulation classroom of the Estonian Academy of Security Sciences. In 2011, altogether four simulation trainings were organised for detecting radioactive contraband.

The working party consisting of the representatives of the Tax and Customs Board, the Radiation Department of the Environment Board, the Security Police Board, the Rescue Board and Police and the Border Guard Board initiated a joint training to practice information exchange and joint exercises related to the detection of goods posing a radiation hazard in the spring of 2011 in Narva. In 2011, radiation monitors were installed in the harbours of Muuga and Sillamäe with assistance provided by the US to avoid the entry of radioactive contraband onto the territory of the European Union and Estonia.

In 2011, the Tax and Customs Board continued to analyse the transfers of goods between Estonia and the states under embargo. Arms transfers across the external border of the European Union were also analysed. It is planned to analyse the transfers of dual-use chemicals and strategic goods moving through Estonian ports in 2012.

IV Measures planned for the enhancement of strategic goods control in 2012

In 2012, the Strategic Goods Commission plans to continue the activities that improve the control of strategic goods in Estonia and the work of the Strategic Goods Commission. Several of these activities, such as the organisation of seminars and trainings and updating the lists, are the main activities of the commission year after year.

The main activities planned for 2012 are:

- organising seminars for undertakings, researchers and experts to introduce the Strategic Goods Act and other current topics;
- introduction and taking into use of a certification system;
- introducing general licences among entrepreneurs on a wider scale;

- constant updating of strategic goods lists; making amendment proposals concerning the lists of international control arrangements, if necessary;
- updating the webpage with practical information concerning strategic goods (certification, internal compliance programme instructions, general licences, brokering of military goods). In case of media interest, publishing articles that introduce the topic;
- organisation of information days for the companies involved in strategic goods to increase the general awareness and responsibly, introduce legislation of Estonia and other states, and promote cooperation;
- participation of the Strategic Goods Commission experts in joint operations of export controls at Estonia-Russia border points;
- providing assistance in organising international seminars on the control of strategic goods in Estonia;
- making proposals for amending the Estonian Penal Code to bring the penalties into conformity with their harmfulness and international practice;
- participation within its competence in the work of working parties for changing the Weapons Act and working out demilitarisation requirements. Promoting cooperation in order to improve the efficiency of other state authorities involved in export control.

In 2012, the Security Police Board, as one of the supervisory organisations to the commission, will continue to cooperate with the special services of various countries for the prevention of illicit proliferation of conventional weapons and weapons of mass destruction and technology, materials and equipment necessary for their manufacturing and to participate in international exercises with the aim of practicing joint actions for different scenarios.

Information exchange between the Member States of the European Union will continue to improve in order to harmonise the technical requirements regarding firearms and their essential parts, registered users and rendering arms incapable of firing. The first legal measures have now been adopted, but implementing is resource consuming for the Member States and takes time.

In the global context, the most important goal is to control the trafficking of weapons of mass destruction and materials and thereof between countries, in order to avoid these materials ending up in countries under embargo or in the hands of aggressive end-users. The identification of such offences is very complicated and demands professional skills from the supervisory officials in identifying the goods as well as checking documents, brokers and end-users. In addition to constant training, additional knowledge is obtained through meetings with various experts within the framework of export control organisations.

In 2012, the Tax and Customs Board will continue visits to companies that deal with strategic goods and perform first and follow-up visits. This allows to maintain a good dialogue with the companies, to draw their attention to legislation regulating the area and potential problems, to find answers and solutions to practical issues that arise in everyday life, and to make proposals in order to improve regulations, if necessary.

V Statistics of the Strategic Goods Commission activities in 2011

- 1. The number of issued licences, certificates and end-use control documents as well as consultations provided**

The Strategic Goods Commission issued special authorisations and end-use control documents for strategic goods in 2011 as follows:

- import licences of military goods - 110
- export licences of military goods - 52
- export licences of dual-use goods - 42
- transit licences - 5
- end-use certificates - 6
- international import certificates - 10
- military goods brokering export licences - 1
- general export licence user certificates - 0

In 2011, a total of 226 documents were issued, including 210 special authorisations and 16 end-use documents. The number of issued documents has been increasing year on year. In comparison, 190 documents were issued in 2010, including 160 special authorisations. Goods were exported, imported and moved through Estonia under special authorisations of strategic goods to the tune of 23.3 million euro in 2011, which is twice as large as in 2010, when the value of goods was 10.7 million euro.

The officials of the Tax and Customs Board contacted regional representatives dealing with strategic goods to identify strategic goods on 914 occasions, which is 24% more than in 2010, when the number of contacts made was 606. The Secretariat of the Strategic Goods Committee gave consultations to people concerning the licensing of strategic goods and identification of goods as belonging to the strategic goods list on around 150 occasions, including around 100 requests made by the Tax and Customs Board.

The Strategic Goods Commission uses all conventional means of communication for in-house communication. The licences are processed using a special programme called Tracker. In addition to constant communication via electronic communication channels, 31 virtual, conventional and extraordinary commission meetings were held in 2011.

2. Entry into or refusal to make an entry into the state register of brokers of military goods

Two entries were made into the register of military goods brokers in 2011: AS Jahipaun and OÜ Bristol Trust. As of 31 December 2011, four undertakings had been entered into the state register of brokers of military goods: Musket OÜ, Dolfín Aero OÜ, AS Jahipaun and OÜ Bristol Trust.

3. Refusals to issue a licence, certificate or end-use control document

The Strategic Goods Commission did not refuse to issue any licence, brokering registry entry, certificate nor end-use control document in 2011.

4. Offences related to strategic goods and international sanctions

In 2011, the Tax and Customs Board discovered a total of 29 offences in relation to transfers of goods without licences, failure to submit an intra-EU notice or submission of invalid licences to the Tax and Customs Board during customs formalities. Elements of criminal offences that qualify pursuant to §392 of the Penal Code were detected in 22 occasions, and in 21 of these occasions the illicit import or export of strategic goods that are forbidden or require special authorisation was identified. In relation to the identified

criminal offences, criminal proceedings were initiated in 16 cases and in the case of the remaining six offences the substitution of the detention of a suspect as laid down in § 219 of the Code of Criminal Procedure was applied, because the crime was committed by foreigners that did not have a permanent or temporary place of residence in Estonia and they consented to make a payment covering the procedural expenses and the potential pecuniary punishment towards the public revenues. The total sum of payments made towards public revenues was 1,180 euro.

Illicit import or export was discovered concerning the following goods belonging to the list of strategic goods: electric shock weapons, parts of firearms and their essential components, ground vehicles, cartages of firearms and residues of zirconium.

Taking into account the facts of the committed offences and the extent of the guilt of the individuals, in seven cases it was considered possible to ensure the subsequent lawful behaviour of the individuals, who had violated the law, without punishing them in accordance with criminal procedures. Therefore, the proceedings against them were terminated due to a lack of public interest. These individuals had to make a payment of 200–1,600 euro, 3,940 euro in all, to the public revenues.

In the case of one offence concerning strategic goods committed in 2011, the court punished the person who had committed the criminal offence with imprisonment. In 2011, Viru County Court found a habitual offender guilty of the illicit import of an electric shock weapon in alternative proceedings and punished him with a six-month prison sentence. As this ruling was made using alternative proceedings, the court reduced the passed sentence and the sentence was suspended on probation, provided the convicted offender would not commit a new crime within the 18-month probationary period and that the offender would meet the control requirements set for the period of probation.

In case of one offence concerning strategic goods committed in 2011, the criminal procedure initiated was terminated due to the basis ceasing to exist of the criminal procedure. Out of 16 criminal procedures concerning strategic goods initiated in 2011, seven cases are pending and awaiting resolution in 2012.

Seven criminal cases initiated in 2010 with regard to strategic goods transfers related offences reached their final decisions in 2011. In one case, the procedure was terminated due to the basis of the criminal procedure ceasing to exist. As for the six other offences, after taking into consideration the facts of the offences committed and the extent of the guilt of the individuals, it was found that it was possible to ensure subsequent law-abiding conduct of the individuals without penalising them in accordance with criminal procedures, so the proceedings against them were terminated due to a lack of public interest. In five cases, the individuals had to pay 280–1,600 euro towards the public revenue, in total 5,646 euro (in comparison: a state fee for a licence applied for in a timely manner from the Strategic Goods Commission would have been 12.78 euro). In one case, the individual against whom the proceedings were dropped due to lack of public interest had to do 200 hours community service.

Transfers of strategic goods in 2011

Transaction	Goods	Category	Quantity of goods	Origin of goods	Destination of goods	Value (EUR)
EXPORT	Military goods	ML1	108 pcs	DE, AT, GB	RU, UA, KZ, FI, EG	92,074
		ML4	711 pcs	EE	GB, LV	83,575
		ML6	45,000 pcs	GB	FI	100,000
		ML8	1,160 t	EE	AF	978,500
		ML10	541 pcs	CZ, UA, EE, RU	CZ, US, GB, NO, SE, GE, FR, LV, NE	1,273,444
		ML13	63 pcs, 15 sets	EE, PL	BE, LV	86,296
		ML14	308 pcs, 309 sets	EE	GE, PL, FI	114,868
						2,728,757
	Dual-use goods	1A007	320 pcs	EE	FR, US, NI, NO, IN	25,544
		1C234	2,610 kg	CN	RU	14,300
		1C350	327 t	EE	RU, BY, UA, MD, SA	304,707
		2B350	256 pcs	CH, JP	RU	149,736
		3A226	1 pcs	EE	CH	20,600
		3C001	100 pcs	EE	RU	150,000
		6A002	1 set	US	US	9,300
		6A003	1,798 pcs	EE	HK, DO, PA, BB, SR	15,127,560
		9A115	1 pcs	EE	SG	11,200
						15,812,947
IMPORT	Military goods	EST7	211 pcs, 123 sets	CZ, DE, US, FI GB	EE	241,778

		ML1	266 pcs, 18 sets	DE, US, GB, SK, FI, CH	EE	27,400
		ML3	7,322 pcs	CH, US	EE	12,027
		ML4	520 kg, 116 pcs, 450 m	FI, SE	EE	16,125
		ML6	4,074 pcs	DE, GB, SE	EE	59,939
		ML7	30 pcs, 28 sets	DE, FI, US	EE	19,140
		ML9	4 pcs	GB	EE	60
		ML10	2,936 pcs	CZ, RU, UA, CA, US	EE	566,489
		ML11	10 pcs	CA, GB	EE	71,085
		ML13	1,754 pcs, 32 sets	FI, GB, CN, PL	EE	609,382
		ML14	8 pcs	CA, EE	EE	14,996
		ML15	17 pcs	US, IL	EE	326,662
						1,965,083
TRANSIT		ML2, ML3, ML4	264 pcs	SL, MN	MN	2,750,000
		ML6	4 pcs	DE, SE	RU	55,967
						2,805,967
TOTAL						23,312,754

The statistics are based on data received from the carriers during 2011 and the transfers were made under licences issued in 2011 and 2010.