



Summary:

Export controls on military equipment

Summary and conclusions

Sweden allows exports of military equipment to some extent. An important reason for this is to be able ultimately to meet the Swedish armed forces' equipment needs. The value of Swedish exports of military equipment varies considerably between years, since individual major transactions affect statistics. In the past five years the value was between SEK 7.6 and 13.9 billion per year.

Export controls on military equipment are important to ensure that exports are only made to recipient countries that are acceptable from a Swedish perspective and that Sweden fulfils its international commitments in the area. According to the Swedish National Audit Office (NAO) effective export controls are also important for public confidence that exports of military equipment are conducted on the correct grounds. There is Swedish legislation governing export controls of military equipment. More detailed principles for granting licenses can be found in guidelines that are described in the legislative history and have developed through practice. The Swedish regulations stipulate that security or defence policy reasons for an export are to be weighed against foreign policy export obstacles. Sweden also has international commitments in the area of export controls, and the most important are the EU's common position and the UN Arms Trade Treaty (ATT).

Previously the Government reviewed all licences for export of military equipment, but since 1996 export controls are carried out by an agency; the Swedish Inspectorate of Strategic Products (ISP). However, the Government continues to have overall responsibility for export controls. The ISP is to refer important cases to the Government for decisions and has the opportunity to consult with the Export Control Council (ECC), which is a parliamentary advisory body. Since the case dossiers are largely classified, transparency in export control is limited.

The purpose of the audit was to examine whether export controls on military equipment are conducted in an effective manner and function as intended. There are several ways to define the meaning of a certain task being performed effectively. In this audit the

Swedish NAO decided to examine some aspects that are important for export controls to be performed effectively; namely documented procedures and working methods, sufficient documentation, sufficient competence, access to information, and protection against corruption. The audit also looked at how the Government manages its overall responsibility for export controls.

The audit did not include reviewing the correctness of the ISP's decisions or assessing the effects of export controls, for example whether exports are made to acceptable recipient countries. Nor did the audit assess the ISP's efficiency in the form of processing times, for example.

Audit findings

The Swedish NAO's conclusions

The audit shows that the ISP seems to have a functioning working method, and that by and large the documentation shows which aspects were important for the Inspectorate's decisions in individual cases. However, the ISP lacks common approved procedures that cover all the steps in processing military equipment cases. In addition, in many cases there are no documented assessments of certain individual aspects and it is not always apparent how relevant aspects have been weighed against each other to reach a final decision. According to the Swedish NAO, particularly bearing in mind that the Inspectorate's competence is vulnerable, this leads to risks in terms of quality and continuity in the decisions. The audit also shows that the Government has not ensured to a sufficient extent that export controls function as intended by clarifying how the regulatory frameworks should be applied.

Dependence on expertise of key personnel increases the importance of procedures and documentation

The ISP is a small agency that is dependent on the specialist expertise of a few key people. This means, according to the Swedish NAO, that the agency is vulnerable and that expertise and knowledge that is central for the functioning of the agency is at risk of being lost if any of the key personnel terminates their employment. Careful documentation and common documented procedures that cover all steps of the process are therefore important to retain the institutional memory and ensure continuity in decision-making.

There are no common documented procedures for processing military equipment cases

In the opinion of the Swedish NAO, the ISP seems to have a functioning working method, but the Inspectorate lacks common documented procedures that cover all the steps in processing military equipment cases. Nor are there established methods for how assessments of various criteria are to be made. The lack of written procedures was pointed out in the Swedish NAO's annual financial audit already in 2012. The ISP is carrying out a review of its processes and procedures, but at the time of this audit the review had not yet been completed.

The documentation does not always show whether an assessment of all relevant aspects in the Swedish regulatory framework has been made

The audit has shown that by and large the documentation of cases shows which aspects were important in the assessment. However, in many cases there are no explicit documented assessments of individual aspects and it is not always shown how relevant aspects have been weighed against each other to reach a final decision.

Under the Swedish regulatory framework there must be security or defence policy reasons for a license for export of military equipment to be issued and these are to be weighed against any foreign policy obstacles. In the cases audited the reason for exporting military equipment is mainly defence policy considerations, and an assessment of this is as a general rule always documented in more complex cases. A description of relevant foreign policy aspects is given by and large in the case dossiers but explicit assessments, such as whether violations of human rights are to be characterised as widespread and gross, are often missing.

Under the Swedish regulatory framework, all aspects relevant in a case must be weighed against each other in an overall assessment. In the cases subject to consultation in the ECC the case dossier does not generally show how the ISP has reached a decision in light of the consultation. In all these cases, however, the ISP has decided in accordance with the position taken by the majority of the ECC members. The ISP has stated that the reason is documented in cases where the ISP does not take the same position as the ECC majority. In other cases of a more complex nature, it is generally made apparent how the ISP reached its decision.

As regards routine cases, the ISP has decided to only prepare presentation memoranda if this is warranted by the nature of the case. For the recipient countries that figure in routine cases, the Swedish guidelines and practice show that foreign policy obstacles do not exist and that cooperation may be regarded as in line with Sweden's security policy. The ISP has stated that an independent assessment is nevertheless carried out in each individual case. The Swedish NAO has not been able to assess whether this is the case,

since there is no documentation of the considerations or assessments made in the routine cases that were included in the audit.

The documentation does not always show that the international regulatory frameworks were applied when granting licences

There are some criteria concerning human rights and armed conflict in the EU common position that constitute so called unconditional obstacles. This means that if these criteria are met, Sweden is not allowed to grant an export licence. These criteria are not dealt with systematically in the documentation in the cases, but are only mentioned in the cases where the ISP considers them relevant. In many cases it is not shown whether and how the ISP has assessed that the criteria are not relevant in the case in question. According to the ISP this is explained by the fact that an assessment in accordance with the Swedish guidelines is often more stringent and that military equipment exported from Sweden is often not relevant to these criteria. According to the Swedish NAO it may, however, be difficult to know after the fact that an assessment has been made that a particular criterion is not relevant in a particular case unless it has been documented.

In many respects, the ATT criteria overlap the Swedish guidelines and the criteria in the EU common position. There are, however, some aspects that are only found in the ATT, and these are not mentioned in the case dossiers. On the basis of the documentation it is not clear what influence the ATT has had on the licensing.

More extensive security policy analyses of future development in recipient countries is called for

According to the ISP, correct analyses of the recipient country are fundamental for effective export control. The ISP considers that it would be desirable for the Inspectorate to be able to carry out comprehensive security policy analyses of future development in different countries and regions, but that it does not have the capacity to carry out such analyses. The ISP can request information from the Government Offices, for example when cases are subject to consultation with the ECC. However, material from the Government Offices ahead of consultation with the ECC in many cases does not contain such analyses either.

The ISP's protection against corruption within the Inspectorate is inadequate

The ISP has taken some measures to prevent corruption within the Inspectorate, for example by preparing policy documents. However, the ISP has no documented risk analysis in which the risk of corruption in the operations of the Inspectorate is evaluated. According to the Swedish NAO such analysis is fundamental for the prevention of corruption. The ISP has stated that it assesses the risk of corruption in the organisation

to be low, for example because the Inspectorate only has contact with Swedish companies and because the assessment of the possibility of granting a license often takes place at an early stage before any business contract exists. Nor does the ISP have any written procedures for reporting suspicions of irregularities.

The Government very rarely grants licenses

The premise when the ISP was appointed as the licensing authority was that the Government would continue to be responsible for and govern practice by deciding on certain important cases concerning export of military equipment. The legislation stipulates that the ISP is to refer cases to the Government for decision if the case is “a matter of principle or otherwise of particular importance”. However, the ISP has only referred a few cases to the Government in the past 15 years.

According to the ISP there were no other cases that it considered to be of such a nature that they should be referred to the Government. According to the Ministry for Foreign Affairs, the Government follows the progress of the ISP’s export controls and has seen no reason to comment on how the ISP applies the current regulatory framework and practice in its decision-making or to take measures to ensure that the ISP refers more cases to the Government for decision. The Swedish NAO cannot determine if the fact that the ISP refers so few cases to the Government for decision is because there have been no cases that were “a matter of principle or otherwise of particular importance” or because such cases have existed but the ISP has failed to refer them to the Government.

According to the Swedish NAO, one consequence of the Government making decisions so rarely in individual cases is that it is difficult to demand political accountability for individual decisions in the area. The audit has shown that the ISP, often in consultation with the ECC, makes important decisions that require political assessments. These decisions are made by the Director-General of the ISP and cannot be changed by the Government. A broader discussion on export control policy is possible, however, for example in connection with the Government’s submission of an annual communication on export controls to the Riksdag.

The Government has not clarified how different regulatory frameworks in the area are to be applied

The Government has stated that the Swedish and the international regulatory frameworks are to be applied concurrently, and that the provision that is most stringent in the individual case shall apply. However, the Government has not investigated how the regulatory frameworks relate to each other, for example as regards which is most stringent on different points, nor has it defined in detail the terms used in the different

regulatory frameworks. This means that the demanding task of determining how the regulatory frameworks are to be interpreted and applied has been largely left to the ISP.

The current written Swedish guidelines are from the early 1990s. Since then there have been major changes in the form of external developments, development of practice and additional international commitments. According to the Swedish NAO an update of the written guidelines is necessary if they are to function as a guidance document, and this was also stated in public inquiry reports in both 2005 and 2015. The final report from the "KEX" Inquiry of 2015 states that it is important that the Government prepares new guidelines which combine in one document all national and international principles and criteria on which licensing should be based. The ISP has also called for an inquiry to clarify how the various regulatory frameworks could be combined into one document.

The Government plans to submit a Government Bill to the Riksdag in 2017 aimed at tightening export controls on military equipment in relation to non-democratic states in accordance with the Inquiry proposals. Since the process of preparing new legislation in the area was in progress at the time of this audit it was too early to say if consolidated guidelines will be produced.

The Swedish NAO's recommendations

Recommendations to the Government

- The Government should ensure that an investigation is made to establish how the different regulatory frameworks relate to each other and how different terms should be interpreted.

Recommendations to the ISP

- The ISP should promptly conclude the work of preparing written procedures that include all steps in the processing of military equipment cases and prepare methods concerning how criteria for the various regulatory frameworks should be assessed.
- The ISP should ensure that the case dossier shows that an assessment has been made of all relevant aspects. Cases of a routine nature should also have some form of documentation that necessary considerations have been made.
- The ISP should ensure that it has access to the necessary information for making assessments of all aspects to be taken into account for granting licenses.
- The ISP should implement and document a risk analysis that includes the risk of corruption in the Inspectorate's organisation. The Inspectorate should also draw up procedures for reporting and dealing with suspicions of irregularities.