THE LEGAL REGULATION OF THE EXPORT, IMPORT, TRANSFER AND TRANSIT OF MILITARY EQUIPMENT AND TECHNICAL ASSISTANCE

Since 1 May 2004 the foreign trade in military items has been regulated by Government Decree 16/2004 (II. 6.) on the licensing of the export, import, transfer and transit of military equipment and technical assistance.

The 1st Annex to the Government Decree 16/2004 (II.6.) – hereinafter called as Gov. Decree – includes the equipments and technologies listed in the Common Military List of the European Union (EU CML, accepted in December 2003.), but also expands the regulation to other equipments not present in the EU CML such as:

Chapter 23: Equipments specially designed for military use
Chapter 24: Military related services
Chapter 25: Instruments of coercion and crime surveillance
Chapter 26: Secret service devices

The 1st Annex stipulates furthermore that:

- Regarding the anti-personnel landmines it is necessary to take into account the requirements of the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction adopted in Oslo, 18 September 1997. See also Act No X. of 1998 of the Hungarian Law (Chapter 4. 2nd Technical Note).

- Export and import licences can only be granted for explosives that meet the requirements stipulated in the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal, on 1 March 1991.

The Inter-ministerial Committee on the Foreign Trade in Military Equipment

The Inter-ministerial Committee on the Foreign Trade in Military Equipment (hereinafter “the ICTME”) sets policy relating to the licensing of international trade in military equipment and technical assistance. The members of the ICTME are:

a) a person designated by the minister heading the Prime Minister’s office and the political state secretaries of the following ministries:

b) the Ministry of Economy and Transport,

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c) the Ministry of Defence,

d) the Ministry of Justice and Law Enforcement,

e) the Ministry of Foreign Affairs.

The ICTME establishes its own rules of procedure. The chairman of the Committee of the Foreign Trade in Military Equipment, defined in Article 4 below (hereinafter “the Committee”), always takes part in the meetings of the ICTME as a standing invitee.

The Committee on the Foreign Trade in Military Equipment

The Committee is authorised to form expert opinions with regard to applications for activity licences, negotiating licences and contract licences.

The members of the Committee are persons designated by:

a) the Minister heading the Prime Minister’s office,

b) the Minister of Economy and Transport,

c) the Minister of Defence,

d) the Minister of Justice and Law Enforcement,

e) the Minister of Foreign Affairs.

f) the Minister of Finance.

The chairman of the Committee is the Director of the Hungarian Trade Licensing Office (HTLO), the Secretary to the Committee is a person appointed by the Minister of Economy and Transport. The chairman of the Committee can on occasion invite the representatives of other ministries and national organisations to participate in the work of the Committee in an advisory capacity. The Committee develops opinions that are unanimously agreed to by all of its members and that take into account the policies set by the ICTME. In the event of disagreement, the chairman of the Committee asks the ICTME for its opinion. The Committee establishes its own rules of procedure.

The Ministry of Foreign Affairs and the HTLO can provide data in accordance with international obligations without any separate authorisation. Once a year, the Minister of Economy and Transport reports to the Parliamentary Defence Committee, the Foreign Affairs Committee and the National Security Committee on the licensing of the trade in arms.

The HTLO and the Hungarian Customs and Finance Guard are authorised to supervise the activity regulated in this decree as well as to check compliance with conditions laid down in the licences.
Restrictions

The export and transit of military equipment and technical assistance is not permissible

a) to countries where there is armed conflict,

b) to countries where armed conflict threatening international peace and security is expected to take place and where the UN Security Council, the Council of the European Union or the Organisation for Security and Cooperation in Europe have called upon the parties concerned to resolve the dispute underlying the conflict through peaceful negotiations or has declared an embargo on the shipment of military equipment, military technical assistance and related training,

c) in those cases where the transaction is contrary to the criteria embodied in the Code of Conduct for Arms Exports, adopted by the Council of the European Union on 8 June 1998,

d) where it would be contrary to the national security interests of Hungary.

Hungary was among the first EU countries to make the Code of Conduct on Arms Exports legally binding by importing it into her national legislation.

The Licensing Process

The 3-tier licensing system of the foreign trade of military equipments follows a very strict procedural sequence, where the listed stages are non-interchangeable:

1. Activity Licence (i.e. registration of traders)

2. Those registered traders planning to engage in business talks with foreign partners have to obtain a Licence for Negotiation in advance that allows proceeding with negotiations and to conclude a contract. Prerequisite to apply for a Licence of Negotiation is the Activity Licence.

3. To perform the contract, the applicant has to obtain a Contract Licence (authorization of export/import. Prerequisite to apply for a Contract Licence is the Licence of Negotiation.

In order to control arms brokering and to avoid circumvention of UN, EU or OSCE embargoes on arms exports, as well as of the Criteria set out in the European Union Council's Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, the Gov. Decree takes into account the recommendations and Best Practice Guidelines of the relevant international organizations and the Common Position 2003/468/CFSP on the control of arms brokering adopted by the Council of the European Union on 23 June 2003.

Following the recommendations of Common Position 2003/468/CFSP it has become a core element of the Gov. Decree that Hungary controls brokering activities both inside and outside of her territory, carried out by brokers who are Hungarian residents or established in the territory of the Republic of Hungary.
As well as in case of exports, all brokering applications are assessed, inter alia, against the provisions of the European Union Council’s Common Position 2008/944/CFSP.

The Hungarian Trade Licensing Office keeps records for a minimum of 10 years of all persons and entities which have obtained a licence for brokering activities. Although a register of arms brokers is established, the registration or authorisation to act as broker does not in any case replace the requirement to obtain the necessary license or written authorisation for each transaction. When assessing the applications to act as brokers, the Hungarian Trade Licensing Office takes into account the records of past involvements in illicit activities by the applicant.

The Gov. Decree incorporates regulations for transit shipments as well, applying the same procedural rules as in the case of exports. It means that all transit applications have to be submitted in advance and are assessed with equal scrutiny, case-by-case and against the same criteria as export applications. The transit licences furthermore, in case of lethal military equipment, live ammunition, explosives and other dangerous goods obligates the responsible shipper for armed security escort along the transit route; from the point of entry up to the point of exit. Transit licences can only be applied for by companies registered within the territory of the Republic of Hungary.

The Gov. Decree stipulates the measures necessary to implement the Council Regulation (EC) No. 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

Furthermore it serves the adequacy of the following legal acts of the European Union:

- Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering,
- the European Union’s Common Military List (006/C 66/01),

The Penal Code of Hungary (261/A§., 263/A§., 263/B§ 287§. and 298.§.) classifies the violations of Government Decree 16/2004. (II.6.) as criminal acts, accordingly, the infringement with military equipments and dual-use goods (acquisition, providing services, trading activities without the necessary documentation) is punishable by administrative fees and from 2 to 8 years of prison terms, while the punishment increases from 5 to 10 years in case the mentioned activities are carried out businesslike or in conspiracy.

CONTROL OF FOREIGN TRADE OF DUAL-USE ITEMS

The Member States of the European Union recognised that they have significant national security interests, national and international responsibility to prevent proliferation of weapons of mass destruction. That is why it was needed to develop a system which makes the maintaining the non-proliferation responsibility within the Community law borders possible.
On the one hand the goods and technologies bearing important economic interests are the subject of international trade so they come under the scope of common trade policy. On the other hand they belong to the instruments of common security and defence policy because of their military end use.

Goods and technologies are called dual use when they are originally planned, developed or modified for civil purposes, but by some characteristics or parameters they can be used for developing, producing or using weapons of mass destruction.

Legal basis


The Council Regulation specifies at Community level the control mechanisms and measures regarding exports, transfer, brokering and transit of dual-use items besides the related rules of procedure; furthermore it contains the list of the controlled items. Council Regulation No 428/2009 has direct effect and is directly applicable in all Member States.

Annex I. of Council Regulation (EC) No 428/2009 contains the list of dual-use items (Annex IV. is the list of items controlled inside the EU).

For the implementation of Council Regulation the Government has adopted Government Decree No. 50/2004 (23 March) on licensing of foreign trade in dual-use goods. Besides containing the national implementing provisions of the Council Regulation – the decree regulates also the import of dual-use items. This regulation has been modified by Government Decree No 108/2007 (9 May) and it is currently under amendment.

Registration

The Government Decree regulates the detailed process of registration obligation of persons trading under the scope of the decree. In this regard only those who registered at the Office may carry on activities under the scope of the decree.

Application required for the registration has to include:

a) tax number;

b) VPID number specified in Article 17 of Act No. CXXVI (2003) on the implementation of the Community Customs Code;

c) document identifying the client or verified copy of that (founder document ID);

d) document certifying the authenticity of sign of the person legitimated for liability;

e) in case of legal person document certifying the representative legitimacy of the person empowered for the relations with the Office;
f) Internal Compliance Program of legal person – endorsed by its chief.

The Internal Compliance Program should include:

a) registration of every document concerning the activities under the scope of this decree;

b) the duties and responsibilities of the person participating in the activity under the scope of this decree;

c) compliance to the relevant regulation, including Council Regulation No. 428/2009 and this decree within the company (institution);

d) action plan on the consequences of haphazard trespass in of the relevant export control regulations.

The Office controls whether the Internal Compliance Program fulfils the legislative provisions. When the operator complies with the registration obligations the Office registers him. The condition of granting licenses or certificates is that the exporter is registered. The registered client informs the Office about any changes in registration data without delay.

Very important element of the decree is that for the technology transfer relating to the border crossing of natural persons needs an export licence.

In case of violation of obligation of the Government Decree penalty can be imposed from 500 000 to 10 000 000 HUF. For the collection of this penalty the Office or the Hungarian Customs are entitled.

The process of licensing

The application for export licence can be handed in at the Customer Service Bureau of the Office. The applications filled in formally complete and correct will be taken over, its processing begins.

The Office will issue the licenses with the consent of the Minister of Foreign Affairs and – depending on the subject of the issue – the commander of the Hungarian Customs and Finance Guard, the Director of the National Atomic Energy Agency and the directors of competent national security services.

The Office has twenty-two workdays to consider the application. The individual export license is valid for one year and can be extended once for one more year upon application for extension submitted thirty days prior to its expiry.

Applications for licenses are denied, if:

a) the issuance of the license would violate or endanger the fulfilsments of commitments under international non-proliferation regimes and other international agreements of the Republic of Hungary or its national security interests;
b) the exporter and/or its business partner(s) contravene local or international regulations regarding the dual-use goods and technologies, and/or act against those;

  c) the exporter does not meet a condition related to the license or submits false data;

  d) the applicant does not operate properly its Internal Compliance Program approved by the Office.

In adaptation of the Council Regulation the Office can draw under licensing process (catch-all) the export of dual-use goods that the lists of the Annexes in the Council Regulation does not include. The Office informs the exporter about this decision in each case.

In case of import the Office issues International Import Certificate if the national authority of the exporter requires it.

Budapest, 27 April 2010