NATIONAL REGULATIONS AND PROCEDURE FOR FOREIGN TRADE IN ARMS, MILITARY EQUIPMENT, DUAL-USE GOODS AND RELATED TECHNOLOGY

The Republic of Serbia continues to strengthen the export control of conventional arms, military equipment, dual-use goods and related technologies with the aim of complying with its international obligations. Its policy is based on the implementation of the UN Security Council binding measures, the fulfillment of obligations stemming from the international conventions the country has adhered to or intends to do so, as well as from the bilateral agreements it has signed, and is focused on the prevention and sanctioning of all illegal activities in this area, especially those that could support terrorism, terrorist organizations or groups in any way.

In accordance with this policy, the control of exports is directed towards the following:

- the countries against which the UN Security Council has imposed sanctions,
- the countries included in the recommendations of the Organization for Security and Cooperation in Europe (OSCE),
- the countries that support terrorism,
- the countries that pose a threat to peace, security and stability in the region,
- the countries whose governments violate human rights or implement internal repression measures.

Foreign trade in arms, military equipment and dual-use goods, i.e., the manner and conditions under which it can be conducted, the competencies required for the issuance of export/import permits, transport, transit, and brokering in foreign trade, monitoring and control, bans, penalties and powers for the adoption of by-laws are regulated by the Law on foreign trade in arms, military equipment and dual-use goods passed by the Assembly of the State Union of Serbia and Montenegro on 17th February 2005 which took effect on 31st March of the same year and is still in force. The objective of this Law was to establish the state control in this field in order to effectuate and protect the Republic of Serbia's interests in the sphere of security, foreign policy and economy, as well as its international credibility and integrity.

The above Law constitutes the basis for comprehensive control of export and import of arms, military equipment and dual-use goods and related technologies, prescribes sanctions for violations, stipulates registration obligation for economic entities, as a prerequisite for conducting foreign trade in controlled goods, determines licensing procedure, as well as the conditions under which permits may be issued and used, defines the tasks and roles of the relevant governmental authorities in connection with the prescribed administrative procedure and strictly prohibits foreign trade, transport, transit, possession of nuclear, chemical or biological weapons and means for their proliferation in accordance with the UN Security Council Resolution 1540.

The Law determines the manner and conditions under which it is possible to conduct foreign trade, transport and transit of arms, military equipment and dual-use goods, i.e., controlled goods, gives their definitions, establishes the authority for issuing licenses for
export, import, transport, transit, and brokering services in foreign trade activities, determines the conditions under which licenses may be issued, the powers of the competent authorities for the Law implementation, supervision, control and penal provisions in case of violations.

The subsidiary legislation for the implementation of the Law on foreign trade in arms, military equipment and dual-use goods are as follows:

1. The Decision on the establishment of the national control list of arms and military equipment (as harmonized with the EU Common Military List in accordance with the EU Code of Conduct on Arms Export);
2. The Decision on the establishment of the national control list of dual-use goods (in compliance with Annex I to Regulation (EC) No. 1334/2000);
3. The Decision on the criteria for issuing licenses for export of arms, military equipment and dual-use goods;
4. The Law on the Register of persons licensed to conduct foreign trade in controlled goods, and
5. The Rule-book on the application form for the issuance of license, license form and other forms of documents accompanying foreign trade in controlled goods;

Foreign trade in arms, military equipment and dual-use goods can be performed by a natural or a legal person provided the same has been registered for such an activity at the Ministry of Economy and Regional Development, and on the basis of export/import licenses issued by the same Ministry. The decision on the entry into the Register is valid for five years.

According to the above Law the applicant company is under obligation to submit an application form prescribed by the Rule-book along with the required documentation and filled license form. In addition, the application needs to contain the correct classification of goods in line with the National control list. The End User Certificate, which is attached to the application for the issuance of controlled goods export license, is obtained from the official authority in the end user country and contains the following data: name and address of exporter, name and address of the end user, final destination country, type of goods, a declaration that the goods will not be used for other purposes, which means that they will be not re-exported or put back into circulation or transfer in any other way without a written approval of the delivering country, signature, name and title of the authorized persons and the number and date of issuance.

According to the above Law, foreign trade in controlled goods is conducted on the basis of a written document - license issued by the Ministry of Economy and Regional Development whereby the person is allowed to perform a single foreign trade operation, which involves the specified amount, quantity and type of controlled goods and is to be effectuated within the time limit of maximum one year from the date of submitting the application and under the terms stipulated by the contract.

In addition to the Ministry of Economy and Regional Development, the following institutions participate in the process of licensing in line with their competences with
respect to the procedure for issuing licenses for foreign trade in controlled goods: the Ministry of Foreign Affairs, Ministry of Defense and Ministry of Internal Affairs consider applications, check out data stated therein and give their approval or opinion on granting a license. The role of each Ministry is defined by the above Law. The Ministry of Economy and Regional Development issues a license upon receiving the approval from the Ministry of Foreign Affairs and the Ministry of Defense, as well as the opinion of the Ministry of Internal Affairs. In case the Ministries which give approvals - the Ministry of Defense and the Ministry of Foreign Affairs refuse to approve of the operation, the Ministry of Economy and Regional Development cannot issue a license, and in case that one of the two Ministries does not agree, the final decision will rest upon the Government of the Republic of Serbia.

When deciding on giving its approval for a foreign trade operation in controlled goods, the Ministry of Foreign Affairs of Serbia takes into account:

- the (non-)existence of the UN Security Council sanctions and OSCE recommendations;
- Serbia's international obligations and foreign policy interests;
- the EU Code of Conduct on Arms and Military Equipment Export, and
- the level of observance, i.e. the status of human rights and freedoms in the final destination country.

When deciding on giving its approval for a foreign trade operation in controlled goods, the Ministry of Defense of Serbia takes into account:

- the impact on Serbia's security,
- whether the weapons and military equipment envisaged for export are included in the export list of arms and military equipment,
- whether there is a decision of the Ministry of Defense of Serbia concerning arms and military equipment from stockpiles of the Serbian Army, and
- whether Serbia has a share in the ownership of technology in question on the basis of technology transfer on the part of the Ministry of Defense.

When deciding on giving its opinion on a foreign trade operation in controlled goods, the Serbian Ministry of Internal Affairs takes into account:

- the impact on the national internal security,
- the impact on the traffic safety, and
- the impact on the safety of lives, personal and property safety of citizens.

The Ministry of Internal Affairs and the Civil Aviation Directorate issue licenses for transit and transport while the Customs Administration performs the customs control.

In accordance with the Law, the application for the issuance of license will be refused in the following cases:

- if the export/import operation does not comply with the foreign policy, security and economic interests of the Republic of Serbia,
- if the applicant company is not registered in the Register of persons licensed to perform foreign trade, and
- if the applicant company does not submit an End User Certificate.

The withdrawal of an issued license is regulated by the said Law. The issued license can be withdrawn in the following cases:

- if the Ministry of Economy and Regional Development becomes aware that the license has been issued on the basis of false information,
- if a significant change of conditions has occurred in relation to those existing at the time of license issuance,
- if the company or the business operation in question poses a threat to the security, foreign policy and economic interests of the Republic of Serbia,
- if the company has ceased to comply with the licensing conditions, and
- if the conditions specified in the license have not been met.

Arms and military equipment and dual-use goods are classified in two National control lists:

- the National control list of arms and military equipment which is an integral part of the Decision on the establishment of the National control list of arms and military equipment, and
- the National control list of dual-use goods, which is an integral part of the Decision on the establishment of the National control list of dual-use goods.

These lists can be found on the Ministry’s official web site: www.merr.gov.rs. The National control lists of the Republic of Serbia are updated in accordance with the corresponding EU lists.

Transport, transit and transshipment are regulated by law. Licenses are required for transport and transit of arms and military equipment. Land and water transport licenses are issued by the Ministry of Internal Affairs of the Republic of Serbia and air transport licenses are provided by the Civil Aviation Directorate, all on the basis of the previously issued export/import license by the Ministry of Economy and Regional Development and the approvals obtained from the Ministry of Defense and the Ministry of Foreign Affairs. Transit of arms and military equipment is subject to the same procedure without having to obtain an export/import license from the Ministry of Economy and Regional Development.

The Law on foreign trade in arms, military equipment and dual-use goods ("The Official Gazette of Serbia and Montenegro," No. 7/05) stipulates pecuniary penalties for export/import control violations, namely a fine equivalent to the value of these goods or up to five times that amount shall be imposed in the following cases:

- If the person performs such a foreign trade operation without being registered in the Register of persons licensed to perform foreign trade in controlled goods kept by the Ministry of Economy and Regional Development,
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