Romanian Export Controls of Dual-Use Items and Technology System

Legal framework

Primary legislation

**EU legislation**


**National legislation**

Government Ordinance No. 119/2010 regarding the export control regime of operations with dual-use items.

Law No 197/2011 for the aproval of Government Ordinance No 119/2010 regarding the export control regime of operations with dual-use items.

Law No. 92/2004 approving the participation of Romania in the Australia Group, export control regime for non-proliferation of chemical and biological weapons.

Law No. 40/2006 approving the participation of Romania in Zangger Committee and Nuclear Suppliers Group, export
controls regimes for non-proliferation of nuclear weapons.

Government Ordinance No 202/2008 to put into practice international sanctions, with amendments.

Secondary legislation

Government Decision No 2429/2004 regarding the structure and functioning of the Council for endorsing the license applications for operations with dual-use items.

Minister of Foreign Affairs Order No. 101/2011 for the implementation of the Government Ordinance No. 119/2010 regarding the export control regime of operations with dual-use items.

Minister of Foreign Affairs Order no. 422/2011 to put into operation the export control regime stipulated in the Council Regulation (EC) No. 428/2009 for the export of a horizontal milling and boring machine, model BMT 150 CNC to Bharat Heavy Electricals Ltd., High Pressure Plant, Tiruchirapalli, 620014, India.


Minister of Foreign Affairs Order no. 703/2011 to put into operation the export control regime stipulated in the Council Regulation (EC) No. 428/2009 for the export of a shifting and rotative table model MRD 3000X4000X2500 to Bharat Heavy Electricals Ltd. Ramachandrapuram, Hyderabad 502032, India.

Minister of Foreign Affairs Order no. 753/2011 to put into operation the export control regime stipulated in the Council Regulation (EC) No. 428/2009 for the export of a CNC vertical lathe model SC 30-CNC-1S-1MS-3H to Bharat Heavy Electricals Ltd. High Pressure Boiler Plant, Tiruchirapalli 620014, India.


Minister of Foreign Affairs Order no. 1164/2011 to put into operation the export control regime stipulated in the Council Regulation (EC) No. 428/2009 for the export of a horizontal milling and boring machine model BMK 130 CNC to Bharat Heavy Electricals Ltd. Ramachandrapuram, Hyderabad 502032, India.

**Licensing and assessment**

**National authority for export control**

An effective common system of export controls on dual-use items is necessary to ensure that the international commitments and responsibilities of the EU Member States, especially regarding non-proliferation are complied with.

The existence of a common control system and harmonised policies for enforcement and monitoring in all Member States is a prerequisite for establishing the free movement of dual-use items inside the European Community.

The National Authority on export controls (National Agency for Export Controls) was created *de jure* in 1992 and *de facto* 1993.

In December 2009 (Government Decision No 1423/2009) the National Agency for Export Controls was organised as a General Directorate within the Ministry of Foreign Affairs (DG ANCEX) and since July 2010 as a Department for Export Control - ANCEX.
MFA through the Department for Export Control - ANCEX is the Romanian authority responsible for the control of operations with dual-use items, the control of exports, imports and other operations with military goods and the national authority responsible for the implementation of Chemical Weapons Convention provisions. The Department for Export Control – ANCEX (D-ANCEX) is headed by a director general.

Inter-ministry Council

All license applications are subject of the Council for endorsing the license applications (Inter-Ministry Council).

The Inter-Ministry Council consists of representatives from Ministry of Foreign Affairs, Ministry of National Defence, Ministry of Economics, Ministry of Administration and Interior, National Customs Authority, National Commission for the Control of Nuclear Activities and intelligence services.

The Chairmanship of the Inter-Ministry Council is assumed by the director general for export controls.

The Secretariat of the Inter-Ministry Council is assumed by MFA/D - ANCEX.

Types of licenses granted

*Individual export authorisation* – is an export license granted to one specific Romanian exporter for one end-user or consignee in a third country and covering one or more dual-use items specified in Annex I and Annex IV of the Council Regulation (EC) No 428/2009.

*Global authorisation* – is an export license granted to one specific Romanian exporter in respect of a type or category of dual-use items specified in Annex I and Annex IV Part I of the Council Regulation (EC) No 428/2009, which may be valid for exports to one or more specified end-users and/or in one or more specified third countries


*Authorisation for brokering services* – granted to a broker resident or established in Romania for brokering services of dual-use items listed in Annex I the Council Regulation (EC) No 428/2009 if the items in question are or may be intended in their entirety or in part, for any uses referred to in Article 4(1) of the Council Regulation (EC) No 428/2009.
Transit authorisation – granted for the transit of non-Community dual-use items specified in Annex I of the Council Regulation (EC) No 428/2009 if the items are or may be intended in their entirety or in part, for uses referred to in Article 4(1) of the Council Regulation (EC) No 428/2009.


For the purpose of the Council Regulation (EC) No 428/2009 export shall mean:
- an export procedure within the meaning of Article 161 of the Regulation (EEC) No 2913/92 (the Community Customs Code),
- a re-export within the meaning of Article 182 of that Code but not including items in transit, and
- transmission of software or technology by electronic media, including by fax, telephone, electronic mail or any other electronic means to a destination outside the European Community; it includes making available in an electronic form such software and technology to legal and natural persons and partnerships outside the Community. Export also applies to oral transmission of technology when the technology is described over the telephone.


The responsibility for deciding on individual, global or national general export authorisations, on authorisations for brokering services, on transits of non-Community dual-use items or on authorisations for the transfer within the Community of the dual-use items listed in Annex IV lies with D-ANCEX. National provisions and decisions affecting exports of dual-use items must be taken in the framework of the common commercial policy, and in particular Council Regulation (EEC) No 2603/69 of 20 December 1969 establishing common rules for exports.

License applications shall be solved no later than 45 days from the date the complete necessary documentation has been submitted.

The individual licences have maximum 1 year validity and can be renewed upon a new application presented by the
applicant.

The validity term of the global authorisation is maximum three years counted from the date it was issued. This period can be extended only once, for one year longer, pending on justifiable request for extension submitted within 30 days time frame, prior to its expiry.

The National General Authorisation is valid until revocation by order of the ministry of foreign affairs.

The license applications may be subject, if appropriate, to an End-Use Statement or an End User Certificate (certified by the authority/government of the end-user’s country).

D - ANCEX may require the International Import Certificate or an equivalent document, issued or certified by the competent authority of the country of destination, by means of which the exporter accepts to comply with the declared final destination and end-use and not to reexport the goods provided without a written approval of the Romanian competent authorities according to the law or of the competent authority of the final destination country. The International Import Certificate or the equivalent document, in original form, must be attached to the export licence application.

In the case of the export of dual-use items from Romania, the Romanian exporter must obtain, from his foreign partner, the Delivery Verification Certificate or the equivalent document, issued or certified by the competent authority of the destination country, attesting that, after delivery, the dual-use items have reached the final destination, no later than 4 months since the goods have been exported. The Delivery Verification Certificate or the equivalent document shall be submitted to D - ANCEX in original form.

D - ANCEX delivers the International Import Certificate, the Delivery Verification Certificate or any other equivalent documents, issued or certified on the terms requested by the competent authority of the exporter’s country.

An authorisation shall be required for the export of dual-use items not listed in Annex I if the exporter has been informed by D - ANCEX that the items in question are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons.
An authorisation shall also be required for the export of dual-use items not listed in Annex I if the purchasing country or country of destination is subject to an arms embargo decided by a common position or joint action adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe (OSCE) or an arms embargo imposed by a binding resolution of the Security Council of the United Nations and if the exporter has been informed by D - ANCEX that the items in question are or may be intended, in their entirety or in part, for a military end-use.

An authorisation shall also be required for the export of dual-use items not listed in Annex I if the exporter has been informed by D - ANCEX that the items in question are or may be intended, in their entirety or in part, for use as parts or components of military items listed in the national military list that have been exported from the territory of Romania without authorisation or in violation of an authorisation prescribed by national legislation of Romania.

If an exporter is aware that dual-use items which he proposes to export, not listed in Annex I, are intended, in their entirety or in part, for any of the aforementioned uses he must notify D - ANCEX which will decide whether or not it is expedient to make the export concerned subject to authorisation.

Romania may adopt or maintain national legislation imposing an authorisation requirement on the export of dual-use items not listed in Annex I if the exporter has grounds for suspecting that those items are or may be intended, in their entirety or in part, for any of the aforementioned uses.

Brokering services

According to the Council Regulation (EC) No 428/2009, brokering services shall mean:
— the negotiation or arrangement of transactions for the purchase, sale or supply of dual-use items from a third country to any other third country, or
— the selling or buying of dual-use items that are located in third countries for their transfer to another third country.

An authorisation shall be required for brokering services of dual-use items listed in Annex I the Council Regulation (EC) No 428/2009 if the broker resident or established in Romania has been informed by D - ANCEX that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in Article 4(1) of the Council Regulation (EC) No 428/2009. If a broker is aware that the dual-use items
listed in Annex I of the Council Regulation (EC) No 428/2009 for which he proposes brokering services are intended, in their entirety or in part, for any of the uses referred to in Article 4(1) of the Council Regulation (EC) No 428/2009, he must notify D - ANCEX which will decide whether or not it is expedient to make such brokering services subject to authorisation.

MFA may extend the application of the aforementioned provisions to non-listed dual-use items for uses referred to in Article 4(1) of the Council Regulation (EC) No 428/2009 and to dual-use items for military end use and destinations referred to in Article 4(2) of the Council Regulation (EC) No 428/2009.

Transit

According to Council Regulation No 428/2009 transit shall mean a transport of non-Community dual-use items entering and passing through the customs territory of the Community with a destination outside the Community.

The transit of non-Community dual-use items listed in Annex I of the Council Regulation (EC) No 428/2009 may be prohibited by D - ANCEX if the items are or may be intended, in their entirety or in part, for uses referred to in Article 4(1) of the Council Regulation (EC) No 428/2009. When deciding on such a prohibition D - ANCEX takes into account the obligations and commitments Romania has agreed to as party to international treaties or as members of international non-proliferation regimes.

Before deciding whether or not to prohibit a transit D - ANCEX may impose in individual cases an authorisation requirement for the specific transit of dual-use items listed in Annex I of the Council Regulation (EC) No 428/2009 if the items are or maybe intended, in their entirety or in part, for uses referred to in Article 4(1) of the Council Regulation (EC) No 428/2009.

Enforcement
Sanctions/Penalties

D - ANCEX has a Control Team for conducting enforcement tasks. It enjoys free access to any relevant documents and information for the strategic export control system. Enforcement activities can be carried out during the pre-licensing, licensing, post-licensing and post-delivery phases.

According to Art. 302 of the Romanian Criminal Code – Breach of provisions regarding import and export operations (Title VIII – Offences against the regime established for certain economic activities) - persons carrying out import, export and transit activities without an authorisation are punished as follows:

- Natural persons – imprisonment: minimum 2 years, maximum 7 years;
**International embargoes and restrictive measures**

Government Ordinance No 202 of 4 December 2008 with regard to the enforcement of international sanctions, regulates the modality to enforce on the domestic level of international sanctions imposed by the UN Security Council or by various legal instruments adopted by the European Union as well as of non-binding international sanctions adopted by various international organizations or by other states or by unilateral decisions taken by Romania. The Ordinance regulates in detail the enforcement of international sanctions, the attributions of public authorities and institutions with regard to the enforcement of international sanctions and specific provisions concerning the goods that make the object of international sanctions. The infringement upon its provisions represents contravention that may end up in fines in the range of 10,000 up to 30,000 lei.

**Outreach to Industry**

The export control legislation, rules, procedures and documents adopted in international fora are presented and detailed within Annual National Conference, thematic seminars, workshops and round tables.

MFA/D - ANEX conducts a continuous and robust program of **Government Outreach to Industry**.

All the events organised by MFA/D - ANEX are focused to support common interpretation and coherent implementation of Romanian legislation, both by government institutions and by the industry.

**Transparency**

Transparency is a key responsibility of the government in the context of an effective export control legal framework.

D - ANEX organizes programs of information sharing for the benefit of commercial companies with respect to the principles, objectives, norms and procedures on the regime of export of dual-use items, implements national warning programs in the benefit of the domestic producers and natural or legal persons exporting dual-use items.
On request, provides free of charge specialized consultation to the commercial companies and other interested persons in carrying out operations with dual-use items subject to export control.

The forms for certificates, licenses and other documents issued by D - ANCESX, related to the assessment of operations with dual-use items, are approved by order of the MFA minister and are published in the Official Bulletin of Romania, Part I.

The national legislation and regulations can be consulted on the official website of MFA/D - ANCESX – www.ancex.ro

Contacts

Călin-Radu ANCUŢA  
General Director, D-ANCEX  
Ministry of Foreign Affairs  
Phone: +40 21 311 20 83; +40 21 305 72 19  
Fax: +40 21 311 12 65  
Email: ancex@ancex.ro

Dan Sorin MARIAN  
Head of dual-use division, D-ANCEX  
Ministry of Foreign Affairs  
Phone: +40 21 305 72 22  
Fax: +40 21 311 12 65  
Email: dsmarian@ancex.ro