

LAW ON EXPORT AND IMPORT OF DUAL-USE ITEMS

I. INTRODUCTORY PROVISIONS

Subject matter of the Law

Article 1

This Law shall govern the manner and requirements for export, import and transit of dual-use items, as well as for providing brokering services and technical assistance related to dual-use items.

Purpose of the Law

Article 2

The purpose of this Law is establishing control in exports and imports of dual-use items and in providing brokering services and technical assistance related to dual use items, in order to exercise and protect defence, security and foreign policy interests of the Republic of Serbia, its international credibility, and to ensure compliance with international commitments of the Republic of Serbia in this field.

Meaning of specific terms

Article 3

Specific terms used in this Law shall have the following meanings:

- 1) *Dual-use items shall mean* items, including software and technology, which may be used both for civilian and military purposes, including the items that may be used for non-explosive purposes, as well as items which may be used in any way for dissemination of or manufacturing weapons of mass destruction;
- 2) *Export of dual-use items shall mean:*
 - (1) taking out, sending or delivery of items from the territory of the Republic of Serbia to the territory of another country or customs territory, in accordance with customs regulations;
 - (2) re-export of items as referred to in customs regulations, not including items in transit;
 - (3) transmission of software and technology by electronic media, telefax or telephone to the area outside of the Republic of Serbia, as well as the option of making software and technologies available in electronic form to persons outside of the Republic of Serbia.
- 3) *Import of dual-use items shall mean* bringing in, transferring into or delivery of dual-use items into the Republic of Serbia from the territory of another country or customs territory, in accordance with the legislation;
- 4) *Exporter* shall mean a legal or natural person-entrepreneur:
 - (1) on whose behalf an export customs declaration is submitted, or a person who, at the time when the declaration is accepted, holds a concluded contract on export with the consignee for the dual-use items in another country and has the power to decide on sending dual-use items out of the Republic of Serbia.

If the export contract has not been concluded, or if a party to the contract does not act on its own behalf, the exporter shall be a person with the power to decide on sending dual-use items out of the Republic of Serbia;

- (2) who makes a decision on transmission, makes transmission possible, or makes software or technology available by electronic means of communication, including transmission by fax, telephone, electronic mail, or any other electronic means, out of the customs territory of the Republic of Serbia;
 - (3) established or resident in the territory of the Republic of Serbia, and exporting items on behalf of and for the account of persons established outside of the Republic of Serbia.
- 5) *Importer* shall mean a legal or natural person-entrepreneur established or having a seat in the territory of the Republic of Serbia who imports dual-use items into the Republic of Serbia;
 - 6) *Brokering services shall mean* negotiating or arranging and brokering in transactions related to purchase, sale or procuring dual-use items from a foreign country and sale thereof to another foreign country, as well as purchasing or buying dual-use items in one foreign country for transferring them to another foreign country.
Brokering services shall not mean transportation services, financial services, insurance, re-insurance, advertising and promotion;
 - 7) *Broker shall mean* a legal or natural person-entrepreneur established or having a seat in the territory of the Republic of Serbia, providing the services referred to in point 6) of this Article from the Republic of Serbia into the territory of another country;
 - 8) *Technical assistance shall mean* a service referring to development, production, modification, operation, assembling, testing, repairing, maintenance, storage or detection of dual-use items, as well as other technical services that may involve instructions, training, transfer of know-how and skills or professional and advisory services, including assistance provided orally;
 - 9) *Technical assistance provider shall mean* a legal or natural person-entrepreneur established or having a seat in the territory of the Republic of Serbia providing services referred to in point 8) of this Article;
 - 10) *Transit shall mean* land, waterway, air, and/or combined transport of dual-use items entering the territory of the Republic of Serbia, transported through it (either with or without transshipment), and leaving the territory of the Republic of Serbia.
Transshipment shall mean unloading, reloading or change of mode of transport of dual-use items in the territory of the Republic of Serbia.
 - 11) *National Control List of Dual-Use Items shall mean* the list establishing the classification or codification of dual-use items, the export or import of which is subject to obtaining authorisation from the competent authority (hereinafter: the List);
 - 12) *National Control List of Weapons and Military Equipment shall mean* the list establishing the classification or codification of weapons and military equipment, the export or import of which is subject to obtaining authorisation from the competent

authority;

13) Military end use shall mean:

- (1) incorporation items, parts and components into military use items listed in the National Control List of Weapons and Military Equipment;
- (2) use of equipment for production, testing or analysis, and use of their components for development, production or maintenance of military use items listed in the National Control List of Weapons and Military Equipment;
- (3) use of any unfinished product in a plant for the production of military use items listed in the National Control List of Weapons and Military Equipment.

14) *International export control regimes shall mean* Wassenaar Arrangement, Nuclear Suppliers Group, Australian Group, Zangger Committee and Missile Technology Control Regime.

II. SCOPE

Article 4

Dual-use items specified in the List shall be exported or imported subject to authorisation.

Upon the proposal of the Ministry competent for foreign trade (hereinafter: the Ministry), the Government shall define the List which is in accordance with the relevant list of the European Union.

In case the conditions referred to in Article 6 of this Law have been met, it is necessary to obtain export license also for dual-use items not specified in the List.

Article 5

Prior to commencing the activities of export, import, providing brokering services and providing technical assistance, the exporter, importer, broker and technical assistance provider shall determine whether the items in question are dual-use items under the provisions of this Law and regulations based on this Law.

Catchall clause

Article 6

License shall be required for exporting dual-use items not included in the List in cases where the person intending to export has been informed by the Ministry:

- 1) that the items are intended or may be intended, in their entirety or in part, for development, production, modification, operation, assembling, testing, repair, disposing, application, maintenance, storage, detection, or dissemination of weapons of mass destruction;
- 2) that the items will be used or may be used, in entirety or in part, for a military end use in the country of the buyer or in the country of the end user, if such country is subject to a weapons and military equipment embargo based on the relevant

decisions of the United Nations Security Council, Organisation for Security and Cooperation in Europe and other international organisations which are binding for the Republic of Serbia, or based on relevant provisions of the national legislation;

- 3) that such items will be or may be used, in entirety or in part, as parts or components of weapons and military equipment products referred to in the National Control List of Weapons and Military Equipment, and which have been exported from the territory of the Republic of Serbia without license or contrary to the license requirements issued in accordance with this Law.

In case the exporter is aware of or has grounds to suspect that dual-use items he intends to export, which are not mentioned in the List, are intended for or may be used, in entirety or in part, for any of the purposes referred to in paragraph 1 of this Article, he shall inform the Ministry, which will determine whether the license is necessary for such export .

Transit Article 7

The Ministry may issue a decision to prohibit transit of dual-use items specified in the List or items that are, or may be intended, in entirety or in part, for purposes specified in Article 6, paragraph 1, point 1) of this Law.

Immediately upon issuing the decision referred to in paragraph 1 of this Article, the Ministry shall inform of that the authorities competent for internal affairs and customs authorities.

The decision referred to in paragraph 1 of this Article shall be final and may be appealed by instigating an administrative dispute.

Brokering services Article 8

License shall be required for brokering services related to dual-use items specified in the List if the broker has been informed by the Ministry that such items are, or may be intended, in entirety or in part, for any of the uses referred to in Article 6, paragraph 1, point 1) of this Law.

If the broker is aware or has grounds to suspect that dual-use items specified in the List are, in entirety or in part, intended for the purposes referred to in Article 6, paragraph 1, point 1) of this Law, he shall notify the Ministry, which will determine whether license is required for such brokering service.

Brokering service referred to in paragraphs 1 and 2 of this Article may be provided if the Ministry issues license , or finds that no license is required for such service.

Technical assistance

Article 9

License shall be required for technical assistance relating to dual-use items specified in the List outside of the territory of the Republic of Serbia, if the Ministry has informed the technical assistance provider that such technical assistance is intended for the purposes specified in Article 6, paragraph 1, point 1) of this Law.

If the technical assistance provider is aware or has grounds to suspect that the technical assistance which he intends to provide relating to dual-use items specified in the List is intended for the purposes referred to in Article 6, paragraph 1, point 1) of this Law, he shall inform the Ministry, which will determine whether license for such technical assistance is required.

Technical assistance referred to in paragraphs 1 and 2 of this Article may be provided only in case the Ministry issues license, or finds that such license is not required.

Where technical assistance is provided in the form of information which is “publicly available” or part of “basic scientific research”, the provisions of paragraphs 1, 2 and 3 of this Article shall not apply.

III. LICENSE

Article 10

The license referred to in Article 4, paragraph 1, Article 6, Article 8 and Article 9, paragraphs 1, 2 and 3 of this Law, shall be a document issued by the Ministry.

The license referred to in paragraph 1 of this Article shall be individual, with the validity period of up to one year.

Notwithstanding paragraph 2 of this Article, upon a justified request by the exporter, importer, broker or technical assistance provider, the Ministry may extend the validity of license for an additional period of six months.

The license issued in accordance with paragraphs 1 and 2 of this Article may not be transferred to another person.

Article 11

The application for license for exporting and importing dual-use items and/or providing brokering services and technical assistance shall be submitted to the Ministry in the prescribed form.

The application referred to in paragraph 1 of this Article must contain:

- 1) name, address and identification number of the applicant;
- 2) name, description, HS code, identification number and quantity of the items from the List;
- 3) intended use of the items;

- 4) total value of the items;
- 5) particulars on other actors in the commercial transaction: manufacturer, seller, owner, buyer, authorised representative in the customs procedure, exporter, and other actors;
- 6) name and address of the end user;
- 7) manner of payment or of collecting payment;
- 8) proposed validity period for the authorisation;
- 9) other data as required by the Ministry.

The form and content of the license application, the license form, as well as other forms of documents in export and import of dual-use items shall be prescribed by the Ministry.

Article 12

The applicant shall enclose the original End User Certificate, obtained from the official authority of the end user's country and not older than 6 months, to the application for authorisation, as well as the translation of the original certificate certified by a court interpreter.

The original Certificate is to contain the following data:

- 1) exporter's name and address;
- 2) end user's name and address;
- 3) country of final destination;
- 4) description, quantity and use of the item;
- 5) statements that the item will not be used for any other purposes, that it will not be re-exported or in any other manner traded again without the written approval of the competent Ministry from the delivering country;
- 6) authorised person's signature, name and position;
- 7) number and date of issuing.

Deciding on application for license

Article 13

The Ministry shall submit for approval the complete application for license to the ministry competent for defence, the ministry competent for foreign affairs and the ministry competent for interior affairs, as well as to the Security Information Agency .

In case any of the authorities referred to in paragraph 1 of this Article should withhold consent for issuing license , the final decision shall be made by the Government.

The Ministry shall issue license within 10 days of the day of receiving the last approval of the authorities referred to in paragraph 1 of this Article.

Article 14

In processing the request for granting approval, the Ministries and state authorities referred to in Article 13, paragraph 1 of this Law may collect and verify personal and related data, in accordance with the law governing the protection of personal data.

The processing referred to in paragraph 1 of this Article may involve: interviewing the person the data refer to, the persons related to such person and other persons, collecting data from other authorities, organisations and services, or from registries, records, data collections and databases kept pursuant to the law, and undertaking other actions in accordance with the law and regulations.

Considering applications for license Article 15

When deciding on issuing the license referred to in Article 11 of this Law, the Ministry and the authorities referred to in Article 15, paragraph 1 of this Law shall consider whether export or import of dual-use items, or providing brokering services or technical assistance related to dual-use items :

- 1) threatens compliance with international commitments of the Republic of Serbia, stemming from membership in the United Nations, Organisation for Security and Cooperation in Europe, and other international organisations, that are binding for the Republic of Serbia, or from membership in international export control regimes;
- 2) threatens security or defence interests of the Republic of Serbia;
- 3) is contrary to foreign policy or economic interests of the Republic of Serbia;
- 4) facilitates outbreaks or continuation of armed and other conflicts in the country of end use of the items;
- 5) facilitates the use of such items for inciting unrests in the country of end use of the items;
- 6) contributes to the risk of redirecting such items; and
- 7) whether the documents enclosed correspond to the end use as specified in the application.

Exemptions Article 16

Notwithstanding provisions of Articles 13 through 15 of this Law, the Ministry may, under special procedure, issue license for export and import of dual-use items without obtaining consent referred to in Article 15, paragraph 1 of this Law, if:

- 1) items being exported and/or imported are items owned by security or defence forces of the Republic of Serbia, or security or defence forces of another state, and are entering, transiting or leaving the customs territory of the Republic of Serbia for the purpose of:
 - (1) meeting the commitments of the Republic of Serbia stemming from international agreements and membership in international organisations;
 - (2) participating in multinational operations;

(3) participating in international exercises, fairs or other events that take place in or outside of the territory of the Republic of Serbia.

2) in cases of emergency, humanitarian aid or donations are provided.

The statement of the end user or the certificate of the competent state authority on whose behalf the transaction is carried out shall be enclosed to the request for authorisation to perform the activities referred to in paragraph 1 of this Article.

Denial of license Article 17

The Ministry shall deny issuing a license if it determines:

- 1) that the authorities referred to in Article 15, paragraph 1 have withheld consent, and the Government have decided that license may not be issued;
- 2) that the items do not correspond to the data provided in the application,
- 3) that the data provided in the application are insufficient, incomplete, or incorrect.

Termination of validity of the license Article 18

The Ministry shall issue a decision on termination of validity of the issued license if:

- 1) the United Nations Security Council or other international organisations that the Republic of Serbia is member of, should introduce restrictive measures to the country for which the license was issued, or other change in circumstances should arise which may influence the Serbian foreign policy position or defence interests;
- 2) it finds that one or more conditions based on which the license has been issued are no longer in place.

For the cases mentioned in paragraph 1 of this Article, the Republic of Serbia shall not be liable for any damage that may have been caused by termination of validity of the license.

Revoking the license Article 19

The Ministry shall issue a decision on revoking the license if:

- 1) the exporter, importer, broker and/or technical assistance provider should fail to act in line with the license ;
- 2) it should find that the issued license was based on incorrect or incomplete data, and the applicant knew or must have known that the data were incorrect or incomplete.

In the cases mentioned in paragraph 1 of this Article, the Republic of Serbia shall not be liable for any damage that may have been caused by revoking the authorisation.

Modification of license

Article 20

Exceptionally, at their own initiative or upon the request of the exporter, importer, broker and technical assistance provider, the Ministry may modify the license.

The Ministry may, in case the requested modification is a material one, and depending on the actual circumstances, repeat the request for approval of the Ministries and authorities referred to Article 15, paragraph 1 of this Law.

The Republic of Serbia shall not be liable for any damage that may have been caused by modifying the granted authorisation.

Administrative dispute

Article 21

The decision referred to in Articles 19 through 22 of this Law shall be final and may be appealed by instigating an administrative dispute.

Obligations of exporters and importers, brokers and technical assistance providers

Article 22

The exporter, importer, broker and technical assistance provider shall:

- 1) keep records of exports and imports carried out and brokering services and technical assistance provided (commercial, financial and other documents) based on which the following can be identified: dual-use items, quantity of dual-use items, full name and address of the exporter, importer, broker and technical assistance provider, full name and address of the consignee, full name and address of the end user and the use of the items, description of the brokering service or technical assistance, as well as full name and address of the recipient and end user;
- 2) allow competent authorities to collect information on each order or transaction referring to dual-use items, or perform supervision and control of import, export, providing brokering services and technical assistance, means of transport, etc.
- 3) keep documents referred to in point 1) of this Article for at least 10 years from the day of the transaction completed.

The Ministry may specify also other data that must be contained in the documents referred to in paragraph 1, point 1) of this Article, related to export, import, providing brokering services or technical assistance.

Reports

Article 23

Within 15 days of the day of export, import or providing brokering service or technical assistance, the exporter, importer, broker and technical assistance provider shall

submit the report to the Ministry concerning the export, import or brokering service and technical assistance provided, and also specify the number of the license based on which the transaction has been carried out.

The Ministry shall lay down the form and content of the report referred to in paragraph 1 of this Article.

In case any change in the data provided in the documents should take place after the license is issued, the exporter, importer, broker and technical assistance provider shall notify the Ministry of that in writing immediately, and at the latest within seven days from the day of such change taking place or of their becoming aware of such change.

Certificates

Article 24

Upon the request of the applicant, the Ministry may issue the End User Certificate as well as International Import Certificate for dual-use items.

Upon the request of the applicant, the Ministry may issue Delivery Verification Certificate for dual-use items.

The Ministry shall lay down the forms and contents of applications for issuing the certificates and the forms of certificates referred to in paragraphs 1 and 2 of this Article.

Without prejudice to the above, the Ministry or the end user may also verify the End User Certificate as specified by the exporting country.

Annual report

Article 25

The Ministry will form a database on issued, denied, revoked, modified and terminated licenses, on decisions prohibiting transit as well as on realisation of the issued licenses and on certificates issued.

The Ministry will report monthly to the authorities referred to in Article 13, paragraph 1 of this Law, as well as to the customs authorities, on the issued, denied, revoked, modified and terminated licenses, and on decisions prohibiting transit.

The Ministry shall prepare the annual report on realisation of exports and imports of dual-use items, brokering services and technical assistance provided, including the data on prohibited transit, which the Ministry is to submit to the Government.

On adopting the report referred to in paragraph 3 of this Article, the Government shall submit it to the National Assembly (the Parliament).

Exchange of information

Article 26

The Ministry shall exchange information on export and import of dual-use items, brokering services, technical assistance provided and prohibition of transit of dual-use items with other countries, to comply with the international commitments of the Republic of Serbia.

IV. CONTROL

Article 27

The customs authorities, security services and competent inspection authorities of the Republic of Serbia shall carry out constant control of transactions subject to this Law, within their powers.

The ministries, special organisations and other public administration authorities, in addition to the obligation of keeping confidential information, shall also have the right and obligation to exchange all data on exporters, importers, as well as on exported or imported dual-use items that are necessary for carrying out control in accordance with the provisions of this Law.

Exporters, importers, banks and other financial organisations as well as other persons who have information necessary for carrying out the control of export and import of dual-use items, shall present the business books, correspondence and any other information to the Ministry, customs authorities and the prosecutor's office upon their request.

The brokers, technical assistance providers, carriers and authorised representatives in the customs procedure shall be subject to the provisions of paragraphs 2 and 3 of this Article.

V. PENAL PROVISIONS

Offences

Article 28

Legal and natural persons carrying out the activities of export, import, providing brokering services, providing technical assistance and transit, shall be fined in the amount of up to twenty times the value of items or services which are the subject matter of the offence, if:

- 1) they fail to inform the Ministry that it is the case of dual-use items as referred to in Article 6, paragraph 2 of this Law;
- 2) they carry out transit of dual-use items contrary to the decision referred to in Article 7 of this Law;
- 3) they act in contravention of provisions of Article 8 of this Law;
- 4) they act in contravention of provisions of Article 9 of this Law;
- 5) they export or import dual-use items or provide brokering services and technical assistance without license as referred to in Article 10 of this Law;
- 6) they act in contravention of provisions of Articles 23 and 24 of this Law.

For the offences referred to in paragraph 1 of this Article a natural person and representative of a legal person shall be fined in the amount from five times to twenty times the amount of the value of items.

For the offences referred to in points 1) and 5) of this Article, in addition to the fine, an injunction may also be ordered prohibiting a legal person to export or import dual-use items, and prohibiting the representative of the legal person to export, import and also to provide brokering services and technical assistance.

The injunction referred to in paragraph 3 of this Article shall last for three years for a legal person and up to one year for a representative of the legal person, and shall apply from the day such ruling is final and enforceable.

VI. TRANSITIONAL AND FINAL PROVISIONS

Article 29

The rights from individual acts issued by competent authorities that have not been fully put to use or have been partly used by the time of coming into force of this Law may be exercised by the expiry date of the period specified by such acts.

The implementation and monitoring of this Law as well as the regulations issued based on this Law shall be performed by the Ministry in cooperation and in consultations with the representatives of the authorities referred to in Article 15, paragraph 1.

Article 30

Bylaws for implementing this Law will be issued within six months of the day of coming into force of this Law.

Article 31

On the day of coming into force of this Law, the provisions of the Law on Foreign Trade in Weapons, Military Equipment and Dual-Use Items (“Official Journal of Serbia and Montenegro”, No 7/05 and 8/05-corrigendum) referring to dual-use items shall cease to apply.

Article 32

This Law shall come into force on the eight day of the day of its publication in the “Official Gazette of the Republic of Serbia”.