

By virtue of Article 26, Subparagraph 7 of the Constitutional Charter of the State Union of Serbia and Montenegro, I hereby issue the

DECREE

ON PROMULGATION OF THE LAW ON FOREIGN TRADE IN WEAPONS, MILITARY EQUIPMENT AND DUAL-USE GOODS

The Law on Foreign Trade in Weaponry, Military Equipment and Dual-use Goods passed by the Parliament of Serbia and Montenegro at its session on 17 February 2005 is hereby promulgated.

Record No. 145
17 February 2005
Belgrade

President
of Serbia and Montenegro
Svetozar Marović (sgd.)

LAW ON FOREIGN TRADE IN WEAPONS, MILITARY EQUIPMENT AND DUAL-USE GOODS

I. GENERAL PROVISIONS

Article 1

This Law prescribes the manner and conditions under which foreign trade, transport and transit of weaponry, military equipment and dual-use goods can be practiced (hereinafter: "Controlled Goods"), defines these items, determines the authority in charge of issuing licenses for export, import, transportation, transit, brokering and providing services in foreign trade operations, conditions under which licenses can be issued, competences of the authorities in charge of implementation of this Law, supervision and control and penalty provisions in case of violation of this Law.

The Council of Ministers passes provisions for the implementation of this Law.

Article 2

The aim of this Law is to establish state control for the purpose of achieving and protecting security, foreign policy and economic interests of the State Union of Serbia and Montenegro (hereinafter: "Serbia and Montenegro"), international credibility and integrity and ensuring the compliance with international obligations assumed by Serbia and Montenegro.

Article 3

According to this Law, the Controlled Goods shall be as follows:

- 1) weapons, military equipment and related technologies, harmonized with the Common List of the Military Equipment included in the European Union Code of Conduct on arms export.
- 2) dual-use goods, including software and technologies, harmonized with the European Union Dual-Use Goods and Technologies List, that can be used not only for civilian but also for military purposes .

The Council of Ministers determines National Weapons and Military Equipment Control Lists and the Dual-Use Goods List, as well as other lists for the purpose of complying with the obligations from international contracts.

Article 4

The goods not included in Article 3 of this Law shall be considered as controlled goods in a case when a person intending to practice in foreign trade is informed by the competent authorities or has the reason to suspect that the mentioned goods are or could be, on the whole or partially, used for the development, production, manipulation, managing, maintenance, stockpiling, detection, identification or distribution of chemical, biological or nuclear weapons or other nuclear-explosive devices or for the development, production, maintenance or stockpiling of rockets capable of carrying such weapons.

Article 5

Foreign trade, transportation, transit, possession, use of nuclear, chemical or biological weapons and means of their launching, especially for terrorist purposes, shall be prohibited to every non-state actor.

Article 6

The foreign trade in controlled goods includes:

- 1) Export and import
- 2) Scientific and technical cooperation and cooperation in production, procurement and ceding of property rights on the basis of technologies in the area of production of controlled goods.
- 3) Providing intellectual and material services that can be used in project design, development, production, use, and maintenance of controlled goods.
- 4) Representing foreign companies, brokering, re-export, maintenance and other services in foreign trade of controlled goods;
- 5) Non-commercial export and import.

Article 7

The transport of controlled goods, according to this Law, includes all forms of transport (by land, by sea or inland waterways, air transport) of controlled goods to and from the territory of Serbia and Montenegro.

Article 8

The transit of controlled goods (with and without reloading), according to this Law, includes all forms of transit (by land, by sea or inland waterways, air transport) through the territory of Serbia and Montenegro, regardless of its final destination.

Article 9

Foreign trade in controlled goods mentioned in Articles 3 and 4 of this Law may be performed only on the basis of a license issued by the Ministry for International Economic Relations of Serbia and Montenegro (hereinafter "the Competent Ministry"), unless otherwise stipulated by this Law.

Article 10

The transport and transit of controlled goods mentioned in Articles 3 and 4 of this Law may be performed only with the permission of the competent authorities.

Article 11

Foreign trade of controlled goods may be performed by a private and a legal entity (hereinafter: "Entity") registered with the competent Ministry for practicing this activity.

Before engaging in foreign trade activities, the Entity shall have the obligation to determine whether the goods mentioned in belong to the category of controlled goods under Articles 3 and 4.

Article 12

The Registry of entities licensed to perform foreign trade in controlled goods is managed by the competent Ministry.

The decision on inclusion in the Registry mentioned in Paragraph 1 of this Article shall be valid for five years.

The manner of keeping the Registry mentioned in Paragraph 1 of this Article shall be prescribed by the Minister for International Economic Relations.

Article 13

The registration for foreign trade in controlled goods shall be done on the basis of a written request of entity, which must include:

- 1) A certified photocopy of a formal decision issued by the competent authority on the registration of business activities;
- 2) The unique personal identification number and tax identification number.
- 3) The proof issued by the competent authority stating that the applicant was never sentenced for a crime and is not under criminal investigation.
- 4) The bank's name and documents certified by the depositor's bank (copies of the last bank statement and annual statement, confirmation that the account has not been blocked for the last six months, copy of the sheet with deposited signatures);
- 5) The applicant's statement saying that he/she is not facing bankruptcy;
- 6) The proof that the applicant has no obligations to pay duties and taxes charged through court ruling;
- 7) The number and profile of employees;
- 8) The statement obliging the applicant to enable and assist the competent authority in controlling and supervising business activities in the field of controlled goods trade as well in control of warehouse space and transportation means.
- 9) Other documents necessary for making decisions on requests from the competent ministry.

II ISSUING LICENSES

Article 14

The license for foreign trade activities in controlled goods is a written document of a competent ministry granting permission to an Entity to

conduct a single foreign trade activity of a known quantity and kind of controlled goods, under conditions stipulated by the contract.

Article 15

The license application for foreign trade activities of controlled goods must contain:

- 1) The name, address and unique personal identification number of the importer or exporter;
- 2) The name, description, tariff mark, identification number from the controlled goods list and the quantity of the controlled goods;
- 3) The intended purpose of the controlled goods use;
- 4) The total value of the controlled goods;
- 5) The data on other participants in trade: manufacturer, dealer, owner, buyer, shipper, carrier, brokers and representatives in trade activities;
- 6) The end user's name and address;
- 7) The method of payment i.e. billing;
- 8) The proposed license expiry date;
- 9) Other information needed for decision making process.

Article 16

Apart from the information mentioned in Article 15 of this Law, the applicant is under obligation to submit with the controlled goods export license request, the original End User Certificate obtained from the competent authority of the end user's country, not older than six months, the translation of the certificate translated by a certified court translator as well as other documents needed for the competent ministry to decide on the request.

The original certificate should include the following information:

- 1) The exporter's name and address;
- 2) The controlled goods end user's name and address;
- 3) The country of the final destination;
- 4) The controlled goods description, quantity and purpose;
- 5) The statement that the controlled goods will not be used for other purposes, that it will not be re-exported or otherwise traded in or transferred without a written permission of the competent ministry of the deliverer country;
- 6) The signature, name and position of the person in charge;
- 7) The file number and the date it was issued.

Article 17

End User Certificate for the import of controlled goods shall be issued by the competent ministry.

Article 18

The license request form, license form, as well as other document forms necessary for foreign trade in controlled goods, shall be prescribed by the Minister for International Economic Relations.

Article 19

The license for foreign trade in controlled goods includes:

- 1) The name, unique personal identification number and exporter's or importer's address;

- 2) The name, description, tariff code, controlled goods list identification number and the quantity of the controlled goods;
- 3) The total value of the controlled goods being exported or imported;
- 4) The name and address of the manufacturer or of the owner and the end user of the controlled goods.
- 5) The method of billing i.e. payment;
- 6) The license expiry date;
- 7) The license number, date of issuance, seal and signature of the authorized person.

The license validity is limited up to a period of one year.

Article 20

Before the decision upon the request for issuing the license for foreign trade in controlled goods pursuant to the provisions of this Law, the competent ministry shall obtain approval of the ministries of Serbia and Montenegro in charge of foreign affairs and defense, as well as the opinion of the ministry for internal affairs of the member state on whose territory the seat of the entity defined in Article 11 hereof is located.

In the process of reaching the decision on approving trade in weapons and military equipment, the ministries of Serbia and Montenegro in charge of foreign affairs and defense, have the right to deny the license issuance.

If both ministries from paragraph 2 of this Article deny the license, the competent ministry can not issue the license, whereas if one of the ministries denies the license, the final decision shall be made by the Council of Ministers.

Article 21

In the process of giving consent to foreign trade in controlled goods, the Ministry of Serbia and Montenegro in charge of foreign affairs considers the following:

- 1) The United Nations Security Council sanctions and recommendations of the Organization for Security and Cooperation in Europe (OSCE);
- 2) The assumed international obligations and foreign policy interests of Serbia and Montenegro;
- 3) The European Union Code of Conduct in Arms and Military Equipment;
- 4) The level of respect of human rights or abuse of human rights and freedoms in the country of final destination.

Article 22

In the process of giving consent to foreign trade activities in controlled goods, the Ministry of Serbia and Montenegro in charge of defense considers the following:

- 1) The impact it has on the security of Serbia and Montenegro;
- 2) Are weapons and military equipment subject to export, on the weapons and military equipment export list;
- 3) Is there a relevant decision of the Ministry of Serbia and Montenegro in charge of defense, which is related to weapons and military equipment from the stock of Serbia and Montenegro;
- 4) Whether Serbia and Montenegro, on the basis of the transfer of technology on behalf of Ministry of Defense and Army, has any share in the property of this technology.

Article 23

In the process of giving its opinion on foreign trade in controlled goods, the ministries of the member states considers the following;

- 1) The impact it has on internal security;
- 2) The impact it has on transport safety;
- 3) The impact it has on the protection of life, personal and property security of citizens.

Article 24

The competent ministry shall make the decision on issuing the license within 30 days from the date the proper application was submitted.

Article 25

The competent ministry shall deny the license if:

- 1) The exporter or importer is not listed in the foreign trade in weaponry, military equipment and dual-use goods Registry (Article 11);
- 2) The exporter or importer states false data in the application (Articles 13 and 15);
- 3) The exporter or importer has not submitted the End User Certificate or if the Certificate is older than six months or if it has not been translated by a sworn-in court translator (Article 16);
- 4) The ministries of Serbia and Montenegro in charge of foreign affairs and defense do not approve the submitted application (Articles 21 and 22);
- 5) It is contrary to Serbia and Montenegro's foreign policy, security and economy interests.

Article 26

The competent ministry shall revoke the issued license if:

- 1) The license was issued on the basis of false data or if the conditions have significantly changed since the license was issued.
- 2) The entity or activities of foreign trade jeopardized Serbia and Montenegro's security, foreign policy and economic interests.
- 3) The entity ceased adhering to the conditions necessary for the license issuing or if the conditions stated in the license have not been fulfilled.

In cases stated in items 1 through 3 hereof, Serbia and Montenegro shall not have any responsibility to the entity possessing the license for possible damage caused by the revocation of the license.

Article 27

The entity notifies the competent ministry, in written, regarding the realization of the controlled goods foreign trade activities or it returns the issued license to the competent ministry if the license has not been effected 15 days from the expiry date of the license at the latest.

Upon the request of the competent ministry, the exporter submits certificate issued by the competent authority of the country of final destination confirming the receipt of the controlled goods.

Article 28

The competent ministry shall develop its own data base on issued, denied and revoked licenses, according to this Law.

The competent ministry shall inform the member states authorities in charge of environmental protection, on issued licenses for foreign trade in chemicals on the controlled goods lists.

The annual report on realization of foreign trade in controlled goods shall be adopted by the Council of Ministers and the Council of Ministers informs the Parliament of Serbia and Montenegro hereof.

III. TRANSPORT AND TRANSIT OF WEAPONS AND MILITARY EQUIPMENT

Article 29

The transportation of weapons and military equipment by land or by sea or inland waterways shall be approved by the member states ministries in charge of internal affairs, on the basis of the license previously issued by the competent ministry for a particular activity of foreign trade and with the consent of Serbia and Montenegro ministries in charge of foreign affairs and defense activities.

The transport of weapons and military equipment by air shall be approved by the authority in charge of air traffic, on the basis of the license previously issued by the competent ministry for a particular activity of foreign trade and with the consent of Serbia and Montenegro ministries in charge of foreign affairs and defense activities.

Article 30

The transit of weapons and military equipment by land and by sea or inland waterways shall be done in a prescribed manner and upon the approval of member states ministries in charge of internal affairs, and with the approval of Serbia and Montenegro ministries in charge of defense and foreign affairs activities.

The transit of weapons and military equipment by air shall be done in a prescribed manner and upon the approval of the competent authority in charge of air traffic, and with the approval of Serbia and Montenegro ministries in charge of defense and foreign affairs activities.

Article 31

During transport and transit of weapons and military equipment, necessary security measures shall be taken.

The transport and transit of weapons and military equipment by land and by sea or inland waterways on the territory of Serbia and Montenegro shall be performed under armed escort.

Article 32

The conditions and method of transportation and transit of weaponry and military equipment, security measures and supervision of the transportation and transit on the territory of Serbia and Montenegro shall be prescribed by special regulations of the member states.

IV SUPERVISION AND CONTROL

Article 33

The competent ministry shall be in charge of supervision and control, in accordance with this Law, in cooperation with other authorities (ministry in charge of defense activities, ministries of member states in charge of internal affairs, member states customs administration, authorities of security and intelligence services and others).

The customs authorities, authorities of security and intelligence services and inspection authorities of the member states shall conduct regular control activities within scope of competences as prescribed by the Law, and shall submit to the competent Ministry report hereof.

Article 34

The entity performing foreign trade in controlled goods (importer, exporter, broker, owner or other user) shall have the obligation to keep the documentation on trade in controlled goods for a period of at least 10 years

after the completion of the transaction, to enable control and supervision activities and to provide the necessary help in its implementation, as well as to adhere to the conditions listed in the trade in controlled goods license.

Article 35

The entity involved in foreign trade, transport or transit of controlled goods shall make all phases of trade, transportation, transit and storage of controlled goods available for supervision and control of the competent authorities as provided in article 33 of this Law.

Article 36

The entity involved in foreign trade, transportation, transit, procurement, and storage of controlled goods shall take all the necessary measures to prevent it from going missing or being damaged.

In case of disappearance of or damage to the controlled goods, the entity shall notify the competent ministry within 24 hours from the moment it went missing or was damaged.

Article 37

If there is a well-grounded suspicion that the entity intends to procure the controlled goods for purposes not specified in the license for foreign trade in controlled goods, the competent ministry shall requests from other authorities specified in Article 33 to carry out preliminary control.

On the basis of results of the control as stipulated in paragraph 1 of this Article, the other authorities shall put together a record thereof and notify the competent ministry within 15 days from the date the preliminary control was conducted.

The entity subject to control shall have the right to have access to record content, to receive a copy of the record and to submit to the competent ministry, within 7 days, his or her opinion on the control results.

Article 38

During the customs control of the controlled goods subject to foreign trade, the customs authorities may, within its competences, limit, stop, seize or terminate the transport of the controlled goods, and they shall immediately notify the competent ministry hereof.

Article 39

The obligations of the customs authorities in implementing provisions of this Law shall be prescribed by the member states ministries in charge of finances.

The obligations of the authorities for internal affairs on the territory of Serbia and Montenegro in implementing provisions of this Law shall be prescribed by the member states ministries in charge of internal affairs.

Article 40

Within its scope of competences, the customs administrations shall inform the competent ministry, on quarterly basis, on the issued licenses realization.

V PENALTY PROVISIONS

Article 41

A fine ranging from the amount from one to five times the amount of the value of goods subject to violation shall be imposed upon an entity:

- 1) who engages in foreign trade and brokering activities of dual-use goods (Article 11) without being listed in the registry;
- 2) who engages in foreign trade and brokering activities of dual-use goods (Article 9) without license from the competent ministry;

3) who presents false statements or omits material facts in the process of license issuance (Articles 15 and 16);

4) who commits violation of Articles 27, 34, 35 and 36 of this Law.

A fine ranging from the amount from one to three times the amount of the value of goods subject to violation shall be imposed upon a responsible natural person within the legal entity where the legal entity is the violator.

For violations in Articles 9 and 11, apart from a fine, a protective measure of removal from registry of entities entitled to perform foreign trade in controlled goods shall be imposed as well as seizure of goods subject to violation.

The prohibition in paragraph 3 of this Article shall come into effect on the date the judgement becomes final and shall be valid for three years.

Article 42

The courts or offence authorities of the member states, in accordance with the laws of the member states shall be in charge of conducting the proceedings and passing the judgement.

VI TRANSITIONAL AND FINAL PROVISIONS

Article 43

The rights resulting from individual documents passed by the competent authorities that have not been fully exercised or have been partially exercised until this Law was made effective, may be exercised within the time period stipulated in those documents.

Article 44

The regulations for the implementation of this Law shall be passed within three months from the date this Law comes into effect.

Article 45

The date this Law starts to implement shall be date the provisions of the Law on Trade and Production of Weaponry and Military Equipment related to foreign trade in weaponry and military equipment (*Official Gazette of FRY*, No. 41/96) shall cease to be valid.

Article 46

This Law shall come into effect on the eighth day from the date it is published in the *Official Gazette of Serbia and Montenegro* and shall be implemented from 31 March 2005.

By virtue of Article 1 paragraph 2 of the Law on Foreign Trade in Weapons, Military Equipment and Dual-Use Goods (*Official Gazette of Serbia and Montenegro*, No. 7/2005), the Council of Ministers hereby passes the

DECREE
ON CRITERIA FOR ISSUING LICENSES FOR THE EXPORT OF WEAPONS, MILITARY EQUIPMENT AND DUAL-USE GOODS

1.) This Decree establishes criteria on the basis of which the Ministry for International Economic Relations shall issue licenses for the export of weapons and military equipment as stated in the Decree on Determining the National Control List of Weaponry and Military Equipment and licenses for the export of dual-use goods as stated in the Decree on Determining the National Control List of Dual-Use Goods.

2.) The criteria on the basis of which the licenses for export of weapons, military equipment and dual-use goods shall be issued (hereinafter: **export licenses**) shall be as follows:

1.) CRITERION ONE

*Respect for the international obligations by the State Union of Serbia and Montenegro (hereinafter: **State Union**) in particular the sanctions decreed by the United Nations Security Council, international agreements of non-proliferation of arms and other international obligations.*

The Ministry for International Economic Relations shall not issue an export license if the issuing of the license *inter alia* would result in violation of:

a) international obligation of the State Union and its commitment to enforce the UN arms embargoes and implement OSCE recommendations.

b) international obligation of the State Union according to Nuclear Non-Proliferation Treaty, The Biological and Toxin Weapons Convention and the Chemical Weapons Convention.

c) the obligations of the State Union not to export any form of anti-personnel landmines.

2) CRITERION TWO

The respect of human rights in the country of final destination.

Having assessed the import country's attitude towards relevant principles established by international instruments for human rights protection, the Ministry for International Economic Relations shall:

a) not issue an export license if there is a clear risk that the exported goods might be used for internal repression:

b) exercise special caution and vigilance in issuing licenses, on a case-by-case basis and considering the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU;

For these purposes, equipment which might be used for internal repression shall include, inter alia, equipment where there is evidence that this equipment is similar to the one already used for internal repression by the end-user or where there is reason to believe that the equipment will be diverted from its stated end-use or end-user and used for internal repression.

The nature of the equipment shall be considered carefully, particularly if it is intended for internal security purposes. Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international instruments for human rights protection, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

The measures of internal repression, pursuant to this Decree, shall not include internal measures prescribed by the law and undertaken for the purpose of fighting terrorism or other forms of criminal activities, if they have been passed in according to international standards on the protection of human rights as described in this criterion.

3) CRITERION THREE

The internal situation in the country of final destination of export, as a function of the existence of tensions or armed conflicts.

The Ministry for International Economic Relations shall not issue export license for export which could provoke, prolong or aggravate existing tensions or conflicts in the country of final destination.

4) CRITERION FOUR

Preservation of regional peace, security and stability.

The Ministry for International Economic Relations shall not issue an export license if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim.

When assessing these risks, the following, inter alia, shall be taken into consideration:

- a) the existence or likelihood of armed conflict between the recipient and another country;
- b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;
- c) whether the proposed export would be likely to be used in purposes other than for the legitimate and national security and defense of the recipient;
- d) the need not to affect adversely regional stability in any significant way.

5) CRITERION FIVE

The national security of the State Union as well as that of friendly countries.

The Ministry for International Economic Relations shall take into consideration:

a) the potential effect of the proposed export on State Union's defense and security interests and those of friend countries while recognizing that this factor cannot affect the implementation of the criteria on respect for human rights and on regional peace, security and stability;

b) the risk of use of the proposed export against State Union's armed forces;

c) the risk of reverse engineering or unintended technology transfer;

d) the need to protect the interests of the Army of Serbia and Montenegro.

6) CRITERION SIX

The conduct of the buyer country with regard to the international community, as regards in particular its attitude towards terrorism, the nature of its alliances and respect for international law.

The Ministry for International Economic Relations shall take into consideration, inter alia, the conduct of the buyer country with regard to:

a) its support or encouragement of terrorism and international organized crime;

b) its compliance with its international obligations, in particular on the non-use of force, including those under international humanitarian law applicable to international and non-international conflicts;

c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions.

7) CRITERION SEVEN

The existence of a risk that the proposed export will be diverted within the buyer country or re-exported under undesirable conditions.

In assessing the impact of the proposed export on the importing country and the risk that exported goods might be diverted to an undesirable end-user the Ministry for International Economic Relations shall consider the following:

- a) the legitimate defense and domestic security interests of the recipient country, including any possible involvement in the United Nations or other peace-keeping activity;
- b) the technical capability of the recipient country to use the imported equipment;
- c) the capability of the recipient country to exert effective export control;
- d) the risk of the arms being re-exported or diverted to terrorist organizations (anti-terrorist equipment would need particularly careful consideration in this context).

8) CRITERION EIGHT

The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defense with the least diversion for armaments of human and economic resources.

When assessing license applications, the Ministry for International Economic Relations shall take into account, in the light of information from relevant sources such as UNDP, World Bank, IMF and OECD reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. The Ministry shall consider in this context the recipient country's relative levels of military and social expenditure, taking into account also any European Union or bilateral aid.

3.) When assessing export license applications, apart from the above-stated criteria, the following shall also be taken into account:

a) Possible effects of the State Union on the economic, financial and commercial interest, including long-term interest in establishing stable and democratic relations with trade partners;

b) Possible effects on the relations between the State Union and the recipient country;

c) Possible effects on the transformation and revitalization of that particular branch of industry;

d) Possible effects on the overall economic development of the member states.

4.) This Decree shall enter into force on 31 March 2005.

The Council of Ministers

Record No. 69
17 March 2005
Belgrade

President
of Serbia and Montenegro
Svetozar Marović (sgd.)

