

1st CSP5 Informal Preparatory Meetings
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Sub-working Group on ATT Article 11 (Diversion), 30th January 2019

Bulgaria's experience in managing import documentation

Types of written documentation submitted as part of an application for an export license from the exporting State

Questions to consider

- What types of written documents exist?
- How are such documents prepared? Which ministries and agencies are involved?
- What is the role and/or responsibilities of the importing state regarding such documents?
- What is the role and/or responsibilities of the transit/transshipment state(s)?
- What is the role and/or responsibilities of the brokering State(s)?
- What is the role of the exporting State – i.e. verification and authentication as part of diversion risk assessment?
- In practice, what are the common elements of such documents? What assurances are provided? What is the minimum that should be required?
- What is the role of information exchange in verifying and authenticating import documentation and identify the types of information exchange that are relevant and necessary?

Introduction:

The Republic of Bulgaria is a member of all international export control and non-proliferation regimes.

The Bulgarian export control system adheres to the highest standards in the area of export control by applying highly-effective system of checks and balances on institutional level as well as by established practices related to risk-assessment and information exchange while, during and upon delivery to the final destination.

The export control regimes are:

- **The MTCR** - (Missile Technology Control Regime) - restricts the proliferation of missiles, complete rocket systems, unmanned air vehicles, and related technology for those systems capable of carrying a 500 kilogram payload at least 300 kilometers, as well as systems intended for the delivery of weapons of mass destruction;

The Regime's controls are applicable to certain complete rocket systems (to include ballistic missiles, space launch vehicles (SLVs), and sounding rockets) and unmanned air vehicle (UAV) systems (to include cruise missiles, drones, UAVs, and remotely piloted vehicles (RPVs)). Partners also recognize the importance of controlling the transfer of missile-related technology without disrupting legitimate trade and acknowledge the need to strengthen the objectives of the Regime through cooperation with countries outside the Regime.

- The **HCoC** (Hague Code of Conduct against Ballistic Missile Proliferation) is the result of efforts of the international community to internationally regulate the area of ballistic missiles capable of carrying weapons of mass destruction. The HCOC is the only multilateral transparency and confidence building instrument concerning the spread of ballistic missiles;

- The **AG** (Australian Group) - is an informal forum of countries which, through the harmonization of export controls, **seeks to ensure that exports do not contribute to the development of chemical or biological weapons**. Coordination of national export control measures assists Australia Group participants to fulfil their obligations under the Chemical Weapons Convention and the Biological and Toxin Weapons Convention to the fullest extent possible
- The **NSG** - (Nuclear Suppliers Group) – is a **group of nuclear supplier countries that seeks to contribute to the non-proliferation of nuclear weapons** through the implementation of two sets of Guidelines for nuclear exports and nuclear-related exports. It seeks to reduce the nuclear proliferation by controlling the export and re-transfer of materials that can be applied in the development of nuclear weapons.
- The **WA** - the Wassenaar Arrangement on export Controls for Conventional arms and dual-use Goods and Technologies - established in order to contribute to regional and international security and stability, by **promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations**. The aim is also to prevent the acquisition of these items by terrorists.
- The **Zangger Committee** was formed following the coming into force of the Nuclear Non-Proliferation Treaty (NPT), to serve as the "faithful interpreter" of its Article III, paragraph 2, **to harmonize the interpretation of nuclear export control policies for NPT Parties**. The Committee has been focussing on what is meant in Article III.2 of the Treaty by "especially designed or prepared equipment or material for the processing, use or production of special fissionable material." The Zangger Committee maintains a Trigger List (triggering safeguards as a condition of supply) of nuclear-related strategic goods to assist NPT Parties in identifying equipment and materials subject to export controls.

In their essence, the export control regimes constitute a voluntary accession of States Parties to generally accepted principles and rules of control and exchange of information on certain groups of items and technologies in order to avoid the risk of unauthorized use and distribution.

Why do we control the export of defense-related goods?

Main objective (Why are activities with defense-related goods and dual-use items and technologies controlled?)

Main objective of the export control is to prevent illegal delivery of defense-related goods and dual-use items and technologies.

Main aim (broader understanding)

To contribute to the maintenance of international and regional peace, security and stability by preventing the use of conventional arms by terrorist and criminal groups and illegal proliferation of conventional weapons and dual-use items and technologies.

Legal framework

National Legislation and International Law

- International Law
- UNSC Resolutions
- European Union's Common Positions, Decisions, Regulations (e.g. **Common Position 2008/944/CFSP of 8 December 2008** laying down general rules governing export controls on military technology and equipment through the application of common criteria and mechanisms, denial notifications and consultations, in order to improve convergence in the application of export control policies of EU MS towards third countries in terms of defense-related products.)
- Organization for Security and Cooperation in Europe – decisions (e.g. by the Permanent Council)
- ECOWAS – ECOWAS Convention on Small Arms and Light Weapons;
- UNSC – UNSC's authorization for extending a mandate of peace keeping missions supported by the UN (e.g. AMISOM - regional peacekeeping mission operated by the [African Union](#) with the approval of the United Nations Security Council)
- International Humanitarian Law and International Human Rights Law;
- **At national level, export controls are exercised to promote national security, economic and foreign policy interests of the Republic of Bulgaria, as well as to strengthen international peace and international security and to comply with international commitments.**

Scope

The defense-related items subject to the ATT (Art. 2.1)

- Battle tanks;
- Armoured combat vehicles;
- Large-calibre artillery systems;
- Combat aircrafts;
- Attack helicopters;
- Warships;
- Missiles and missile launchers; and
- Small arms and light weapons.

What is required for an export of defense-related goods?

Documentation needed:

The persons referred may export defense-related products **only** after obtaining an **activity authorization** issued by the Inter-Ministerial Council and an **export license** granted by the Inter-Ministerial Commission.

Exports of defense-related products may be carried out by:

- **Natural and legal persons** registered in accordance with the Commerce Act;
- **Structures of the central administration of the executive power** headed by ministers, the State Agency for National Security, the National Intelligence Service and the National Security Service.

Application process for an activity license:

- An application [Form № 1](#);
- An unique identification number in accordance with Article 23 of the Trade Register Act;
- A copy of any authorization to produce or commercialize defense-related products granted in accordance with the Weapons, Ammunition, Explosives and Pyrotechnic Articles Act, where the applicants carry out activities falling within its scope;
- A security clearance certificate issued by the State Agency for National Security to the natural persons designated to participate in the relevant activity;
- A list of the natural persons designated to participate in the relevant activity accompanied by the curricula vitae of such persons, an extract from the judicial record and a notarized specimen of their signatures;
- An extract from the judicial record concerning the sole trader, general manager, executive director, authorized representative, the members of the managing and supervisory bodies of the legal person, and where such members are legal persons – their representatives in the relevant managing body;

Application process for an activity license:

- A notarized specimen of the signature of the sole trader, general manager, executive director or authorized representative;
- A certificate issued by the relevant territorial entity of the National Revenue Agency attesting to the absence of any outstanding tax liabilities;
- A statement by the sole trader, general manager, authorized representative, the members of the managing and supervisory bodies of the business undertaking that the applicant has no outstanding liabilities to natural and legal persons, where the liability has been recognized before the relevant enforcement authority;
- A statement by the sole trader, general manager, authorized representative, the members of the managing and supervisory bodies of the business undertaking that they are not associated with persons and organisations which have infringed the normative acts regulating the activities involving defense-related products and dual-use items in the Member States and in third countries;
- An information from the trader about the planned foreign trade activities with foreign partners involving defense-related products for a period of no less than one year;
- A receipt for state fee paid.

Export license for defense-related products

- Export of defense-related products indicated in the List of defense-related products can be carried out only after an individual or global license is granted.
- **An individual license** shall be granted for the export or import to or from a certain country of a single shipment or partial shipments on the grounds of contractual relations between the exporter or importer and a foreign contracting party.
- The period of validity of the granted license shall not exceed one year and may be extended once for a period of up to 6 months.

To obtain an individual export license for defense-related products, the applicant shall submit the following documents to the Inter-Ministerial Commission:

1. A filled-in application – [Form № 9](#);
2. A filled-in form – [Form № 13](#) in five copies;
3. A copy of the **documents, certifying the eligibility of the participants in the transaction to carry out the respective activities**;
4. An **original end-user certificate or international import certificate**, issued by a competent authority of the country of the end-user;
5. The document has to include: the participants in a transfer, description, quantity and end-use of the defense-related products;
6. A copy of a **document, certifying the foreign trade relations (contract, order or invoice)**, as well as a document, verifying the participation in the transaction of other persons than the foreign importer and/or end-user;
7. A copy of **the documents, certifying the origin, acquisition, technical characteristics and functional purpose of the defense-related products**;
8. A receipt for state fee paid.

Important: When submitting an application for a global export license, the applicant shall submit **documents** certifying that **during the previous year** he has done and/or will do in the year to come not less than 10 exports of defense-related products to recipients as described in the respective/related application.

To obtain a **license for re-export**, in **case of an export after an import or an export after a transfer** of defense-related products, the applicant shall submit the following **documents** to the Inter-Ministerial Commission (in addition to the above mentioned documents) also the following papers:

1. A copy of the **written declaration** in accordance with Art. 9, p. 2, point 6, or Art. 10, p. 2, point 6, Art. 20, p. 2, point 4, or Art. 23, p. 1, and Art. 24, p. 2, point 3, or Art. 25, p. 1 of the Regulation on the implementation of the Law;

Note: The **written declaration** shall **contain** the following **commitments**:

The defense-related products will not be exported or transferred without the permission of the Inter-Ministerial Commission and will be used in accordance with the Bulgarian legislation;
The end-user undertakes/accepts the commitment to inform the Ministry of Economy, in written and up to 5 days ahead of any further change of the end-user on the territory of the Republic of Bulgaria;

Exemption: Cases if the defense-related goods are destined for the internal market;

Any and every further end-user on the territory of the Republic of Bulgaria submits the abovementioned **written declaration**.

2. A written permission for re-export by the competent authorities of the country of the exporter or
3. A declaration by the exporter, certifying that non-existence of a ban or restriction for re-export of the defense-related products subject to a given transfer.

The abovementioned **written declaration** is requested to be submitted in all of the following cases:

- When applying for an Individual import license, Art. 9, p. 2, point 6 of the Regulation;
- When applying for a Global import license, Art. 10, p. 2, point 6 of the Regulation;
- When applying for a registration of an import of defense-related goods, Art. 20, p. 2, point 4 of the Regulation;
- When importing/receiving defense-related goods stipulated in a General license for a transfer, Art. 23, p. 1 of the Regulation;
- When receiving a verification for a transfer to the territory of the Republic of Bulgaria, Art. 24, p. 2, point 3 of the Regulation;
- When receiving defense-related goods for central administrative structures of the executive being the end-user, Art. 25, p. 1 of the Regulation on the implementation of the Law;

Central administrative structures of the executive are:

- those governed by ministers;
- National Security State Agency;
- National Intelligence Agency;
- National Service for Protection.

What is required for a transfer of defense-related products from the territory of Bulgaria?

"**Transfer**" is any handing over or a movement of defense-related products or technical assistance from and to the territory of the Republic of Bulgaria without leaving the customs territory of the Community from a supplier to a recipient in another EU Member State.

National general transfer license

A national general transfer license shall be granted by the Inter-Ministerial Commission and published on the website of the Ministry of Economy, if:

1. The recipient is part of the armed forces of a Member State or a contracting authority in the field of defense, purchasing defense-related products for the exclusive use by the armed forces of a Member State;
2. The recipient is certified as a recipient of defense-related products in accordance with the national laws of a Member State;
3. The transfer is made for the purposes of demonstration, evaluation or exhibition;
4. The transfer is made for the purposes of maintenance and repair of defense-related products, if the recipient is the originating supplier;
5. The transfer is made for the purposes of execution of an intergovernmental cooperation programme concerning the development, production and use of one or more defense-related products to other Member States which participate in that programme.

Within 10 days before the planned date of each transfer according to an issued national general license of transfer, the consigner must submit to the Inter-Ministerial Commission a declaration form.

Transfer can be conducted by:

natural and legal persons registered in accordance with the Commerce Act from the territory of the Republic of Bulgaria to another Member State

Required documentation:

- certificate for registration of a transfer issued by the Inter-Ministerial Council;

After a transfer is registered by the Minister of Economy or by duly authorized officials, it can be conducted if:

1. The recipient is a governmental body in a Member State;
2. The transfer is made within the structures of the European Union, NATO, IAEA or other intergovernmental organisations for the performance of their tasks.

What is required for brokering activities with defense-related products?

„**Brokering**” shall mean any activity comprising the provision of brokering services;

„**Brokering services**” shall mean: the negotiation or arrangement of transactions for the purchase, sale or supply of defense-related products from a third country to any other third country, or the selling or buying of defense-related products that are located in third countries for their transfer to another third country.

For the purposes of the Bulgarian Export Control Act, the sole provision of ancillary services is excluded from this definition.

Ancillary services are transportation, financial services, insurance or re-insurance, or general advertising or promotion.

“**Broker**” shall mean any natural or legal person or partnership resident or established in the Republic of Bulgaria that carries out brokering services **from the Community into the territory of a third country.**

Brokering of defense-related products may be carried out by:

1. Natural and legal persons registered in accordance with the Commerce Act;
2. Bulgarian citizens;
3. Citizens of other Member States residing on the territory of the Republic of Bulgaria;
4. Citizens of the European Economic Area residing on the territory of the Republic of Bulgaria;
5. Citizens of a third country who have obtained a permit for permanent residence in the Republic of Bulgaria.

Brokering of defense-related products shall be carried out after a **registration by the Inter-Ministerial Council and after a** license for brokering activities issued by the Inter-Ministerial Commission.

IMPORTANT: The abovementioned provisions shall also apply where the persons referred carry out brokering activities outside the territory of the Community and where the persons referred to in items 1-5 carry out brokering activities on the territory of the Republic of Bulgaria on behalf of other natural and legal persons.

Documentation:

Certificate of registration of brokering activities with defense-related products

License for brokering activities with defense-related products is issued by the Inter-Ministerial Commission to the persons registered for brokering activity with defense-related products.

How to perform a transit/transmission of defense-related products through the territory of Bulgaria by car and/or railway?

Transmission – is the transportation of defense-related goods through the territory of one or more EU MS different from the country of origin and the recipient country.

Transit – is the transportation of defense related goods stemming from outside the EU, which are coming in and going through the Community Territory with a final destination outside the Community.

Transit or Transmission is conducted on the basis of a Transit license issued by the Inter-Ministerial Commission.

(Copies of EUC or IIC, copy of a transit license by the state following after the Republic of Bulgaria, issued by a competent authority of that same state.)

An applicant for transit license could be: the importer, the exporter, the end-user or an authorized person.

To perform transit/transmission of defense-related products through the territory of Bulgaria, it is required to hold a **license for transit/transmission** of defense-related products, issued by the Inter-Ministerial Commission (for Export Control and Non-Proliferation of the Weapons of Mass Destruction with the Ministry of Economy and Energy).

The **transit/transmission license** for defense-related products shall indicate the route of passing through the territory of the Republic of Bulgaria and the scheduled date of passage.

To obtain a license for transit/transmission of defense-related products, the consigner or his authorized person shall submit the following documents to the Inter-Ministerial Commission:

1. A filled-in application No. 10;
2. A filled-in form – Annex No. 21 (transportation) or Annex No. 22 (transit) in five copies;
3. A **legalized copy and a certified Bulgarian translation of the documents**, certifying the eligibility of the exporter to carry out the respective activity;
4. A **copy of the end-user certificate and/or international import certificate**, issued by a competent authority of the country of the end-user and a legalized Bulgarian translation;
5. A **copy and a certified Bulgarian translation of the transit/transmission license or acceptance authorization on the territory of the country, following the Republic of Bulgaria** along the itinerary of transit, issued by a competent authority;
6. A **copy and a certified Bulgarian translation of the documents, certifying the origin, acquisition and functional purpose of the defense-related products.**
7. A receipt for state fee paid.

Exception: In case that, according to the national legislation of the country of the consigner no such export license is issued, the applicant shall submit to the Inter-Ministerial Commission a written statement by the consigner or authorized person and a certified Bulgarian translation for this effect.

Validity of the transit/transportation license: The license is valid under the conditions and till expiration of the term, stated therein, but for no longer than 30 days, as of the date of entry into the territory of the Republic of Bulgaria.

How to export defense-related products for participation in foreign exhibitions of military equipment?

In all cases:

- an **activity authorization for export and import of defense-related products**, issued by the Inter-Ministerial Council;
- a **license for participation in defense exhibitions**;
- documentation to be submitted in advance when applying for a license**:
 - filled-in forms,
 - a copy and a certified Bulgarian translation of the documents, certifying the origin, acquisition and functional purpose of the arms;
 - a copy and a certified Bulgarian translation of the documents, certifying the arrangement and conduct of the exhibition;

End-User Certificate (EUC)

The EUC is issued in 3 copies according to a Form 31, as follows:

1. By the Ministry of Defense – if the defense-related products are intended for the needs of the armed forces;
2. By the Ministry of Interior – if the defense-related products are intended for the needs of this ministry;
3. By other state authorities, which use defense-related products in compliance with the functions subject of their competence.

The first copy of the certificate is provided to the applicant.

The second copy is sent to the Inter-Ministerial Commission.

The third copy remains with the respective issuing authority.

The first copy is destined for the export control authorities of the consigner's (exporter's) country and is given to the applicant on behalf of the foreign consigner/exporter.

If the consigner's (exporter's) country requires the issuance of an end-user certificate for defense-related products different from that according to the Form 31, the state authorities may issue such a documents in compliance with the provisions of the Regulation.

To obtain an end-user certificate, the applicant shall submit the **following documents** to the respective authority:

1. An application to obtain a certificate according to a [Form 30](#);
2. A copy of a document, certifying the need for issuance of the certificate;
3. A copy of a document, issued by a competent authority of the consigner's (exporter's) country, certifying his eligibility to perform the export;

Exception: If, according to the national legislation of the exporter's country the document under article 3 is not issued, the applicant shall submit to the respective authority (in the Republic of Bulgaria) a written statement by the exporter/consigner confirming the above mentioned.

Obligation: If, the certificate is not submitted to the competent authorities of the consigner's (exporter's) country within 6 months of the issuing date, the consignee/importer shall return the original of the certificate to the issuing authority.

International Import Certificate (IIC)

If the consigner's (exporter's) country requires from the Bulgarian consignee (importer) an IIC for defense-related products, the IIC is issued in two copies according to a Form 32.

The IIC for defense-related products is issued by the Inter-Ministerial Commission based on an import license or certificate for an import/transfer of defense-related products presented by the importer to the customs authorities.

The first copy is destined for the export control authorities of the consigner's (exporter's) country and is given to the applicant acting in behalf of the foreign consigner (exporter).

To obtain an IIC, the applicant shall submit the following documents to the Inter-Ministerial Commission:

1. An application to obtain a certificate according to a [Form 30](#);
2. A copy of a document, certifying the need of issuing the certificate.

Obligation: If the certificate is not submitted to the competent authorities of the consigner's (exporter's) country within 6 months of its date of issue, the consignee (importer) shall return the original certificate to the authority that has issued it.

Delivery Verification Certificate (DVC)

If the exporter's country requires a DVC for defense-related products, in the customs processing of the goods, the importer shall submit to the customs authorities at the competent customs agency, a filled-in delivery verification certificate in 3 copies in accordance to a [Form 33](#) and a copy of the respective import license.

The applicant obtains a [Form 33](#) from the Inter-Ministerial Commission after submission of an application for issuance of a DVC for defense-related products according to a [Form 30](#).

The DVC submitted is certified by the customs authorities with the competent customs agency that has authorized the respective customs regime.

The first copy of the certificate is given to the importer, the second one is sent within 15 workdays of the date of certification to the Head Office of the Customs Agency to the Ministry of Economy and Energy, and the third one remains with the Head Office of the Customs Agency.

www.exportcontrol.bg

Thank you for your kind attention!

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