

2004 – 2005 Export Controls Developments in Romania

Part I Conventional Arms Export Controls/European Union Code of Conduct on Arms Exports

A. Legislation

Within the framework of export controls policy and daily practices Romania closely follows the EU embargoes and restrictive measures against arms exports.

Romania has updated its national legislation concerning the regime of export and import controls, and other operations with military items. Thus, the Government Ordinance no. 158/1999 for regulating exports, import and other operations with military items has been amended by the adoption of the Law no. 595/2004 (published in the Official Gazette of Romania no. 1239/22 December 2004, Part I).

By the entering into force of the Law no 595/2004, on 25 December 2004, the following have been accomplished:

- distinct legal provisions have been introduced on complying with the principles and criteria stipulated within the EU Code of Conduct on arms exports;
- a rapid mechanism has been legally defined for implementing the embargoes imposed by UN Security Council, by EU Council Common Positions and Joint Actions, OSCE decisions or unilaterally adopted by NATO member states;
- the control of arms brokering activities has been introduced as a distinct activity, implementing thus the EU *acquis* - Common Position 2000/468/CFSP on the Control of arms brokering;
- the control of technical assistance in the field of arms exports has been redefined, in accordance with Council Joint Action nr. 2000/401/CFSP;
- the control of intangible transfers of military software and technology has been redefined accordingly to the best European practices;
- Introducing a new exception for export controls regime i.e. Romania participation to foreign military operations related with peace keeping operations and international transit and transshipment of other NATO member states via Romania (for these cases, control is under simplified customs procedures NATO 302)
- a better definition for licenses extension of validity period for individual and global licenses from 6 months to 1 year;
- updating the fines regime in accordance with inflation rate for 1999- 2004;
- reshaping specific terminology after the splitting moment in 2003 of the 2 pillars (export control of military items and dual use goods and technology).

For the implementation of the new Law no 595/2004, the Head of ANCEX has issued the Order no 59/11 February 2005 on approving the Methodological Norms of Implementation (published in the Official Gazette of Romania, Part I, no 143/17 February 2005, entered into force 30 days after the publication).

Besides other norms of implementation of Law no 595/2004, the Order no 59/2004 contains the commitment to implement an Internal Control Programme for each and every Romanian company authorized to conduct trade operations with military items (implementing a Supreme Council of National Defence Decision).

By codifying within the Law text 595/2004 the domestic practice of using the principles and criteria stipulated in the EU Code of Conduct on Arms Exports during licensing process of any arms export, special attention has been attached, at national level, to this political document.

It was also codified the so-called "*No undercut policy*" and there were conducted consultations with specific EU member states prior denied an essential identical transaction, for both arms and military pillars. During licensing process export controls officials regularly used data from specific mechanism of sharing information within Wassenaar Arrangement and COARM and increased inter-agency cooperation.

The stringent policy and effective practice for respecting EU embargoes was also fortified by adoption of Law 62/2005 for acceptance of some documents as Common Positions adopted within CFSP.

B. Enforcement

In 2004 and 2005, ANCEX conducted several *on site* activities dedicate to compliance and enforcement goals. In particular Romanian companies authorized to transfer arms are periodically, at least once a year, controlled by ANCEX Control Unit. The reasons behind the control activities might be not only sharing information between ANCEX and intelligence services, but also mass media articles.

C. Interagency Cooperation. Government Outreach to Industry

Starting with the second semester in 2003, ANCEX hosts biannual expert meetings with customs and police officers for increasing the cooperation within enforcement and preventive stage of export controls practice.

In addition, the sustainable programme of outreach dedicated to the industry has continued, permanent information activities being organized, as follows:

- The 4th National Conference on Export Controls (28-29 September 2004);
- Conference "New Law on Arms Export Controls" (22 December 2004), for the introduction of the new regulation (Law 595/2004) to Romanian industry;
- Conference "Sustainable Developments of Arms Export Controls" (10-11 March 2005) focused on Order 59/2005 and the status of implementation of the Internal Control Programme.

The robust implementation of transparency principle is also supported by the activity of National Focal Point of Consultancy - consultanta@ancex.ro and via two websites www.ancex.ro and www.export-control.ro, recently reconfigured for becoming more friendly.

D. International Cooperation

Romania actively supports Wassenaar Arrangement activities: in 2004 and 2005 the Head of ANCEX coordinated an ad-hoc working group for export controls documentation and on the ground of the best WA participants' practices advanced the draft of a Consolidated Indicative List with "spare parts" of a reliable End User Certificate (EUC) and made a compilation/library of EUC issued and received by WA states. Another topic debated within WA was the documentation for pre-licensing and post-delivery verification.

Romania continued to remain committed to the application for Missile Technology Control Regime (MTCR) and within national export controls system it continues to apply the Guidelines and Technical Annex of MTCR.

After the signing of the Treaty of Accession, on 25 April 2005, representatives from the Mission of Romania to the EU and from the Military Representation to NATO and the EU, as well as delegates from the capital have started to participate as active observers to all the Council committees and working groups dealing with security and defence issues.

Part II Dual Use Items and Technology

A. Legislation

The legal framework in the field of dual-use items and technology export controls continued to be renewed, both as primary and as implementing legislation. During the last year were adopted:

- Government Decision No.2429/2004 on the organization and operation of the Council for Assenting the Licenses for Dual Use Items and Technology, published in the Official Gazette of Romania, Part I no.18/06.01.2005.
- Government Decision No. 920/2005 on the organization and operation of the National Agency for Export Controls (ANCEX), published in the Official Gazette of Romania, Part I no.759/19.08.2005.
- Within the 25th August 2005 Government Meeting it was adopted a Government Decision setting up the new control lists of dual-use items and technology subject to export and import control regime which transposes Council Regulation No (EC) 1504/2004, amending and updating Council Regulation No (EC) 1334/2000. The Government Decision will be published in the Official Gazette of Romania, Part I, at the beginning of September.

In order to strengthen Romania contribution as Participating Government to international control regimes it was started the procedure for adopting a law for approving Romania participation to Nuclear Suppliers Group (NSG) and Zanger Committee (ZC). It stipulates a Romanian contribution to NSG and ZC up to 15,000 € per year.

A peer review mission in the field of dual use items and technology export controls was conducted from 8th to 9th of March 2005 in Bucharest, in the premises of the National Agency for Export Controls (ANCEX), mission organised by the European Commission. The overall objective of peer review mission was to find out whether adequate

administrative infrastructure and capacity are in place in order to ensure implementation of *acquis* and to provide assistance to further that aim.

The report mentions that Romania is an active and reliable partner of the international export control community and has made efforts setting up the necessary conditions for the alignment to the *acquis communautaire* in the field of export control on dual-use goods. It is also mentioned that Romania has made great efforts in adopting the export control legislation of the EC and in implementing its obligations as member of the international export control regimes.

Romanian legislation controls import, brokerage, transit, transshipment and technical assistance. It is important to mention that in EU transit and transshipment controls are implemented by very few EU Member States at national level and are not covered yet by EC legislation. Current import controls on dual use items of EU origin are only applying to items listed in Annex IV of EC Regulation 1334/2000. Romania consults EU Member States on transactions denied by EU Member States for which Romania give an option. Romanian licensing procedures are broadly in line with the Regulation No (EC) 1334/2000 requirements.

In this moment the Romanian legislation in the field of export control on dual-use goods is overlapping with the provisions of the Council Regulation No (EC) 1334/2000 as amended because at the time of entry in the EU, the Regulation will be directly applicable. Any duplication with the text of EC Regulation would violate EC law.

ANCEX has started to prepare a new legislation which will enter into force the day of entry of Romania into the EU.

B. Government Outreach to Industry. Interagency Cooperation.

ANCEX provides training for exporters and representatives of industry in order to improve their understanding of the objectives and scope of export control. ANCEX organizes seminars, public debates, open and closed doors, annual national conferences, dialogues with managers, distribution of guidelines products. In this effect it was organized the seminar "Export Controls and ICP", May 25-26, 2005, which included two workshops on the internal status of implementation of ICP within Romanian companies carrying out export activities with dual-use and arms products. It is worth also to mention the near National Conference on Export Controls (September 28, 2005);

ANCEX continues its biannual meetings with customs and police officers for increasing the cooperation within enforcement and preventive stage of export controls practice. In this respect we have to mention the seminar "The control of strategic goods in Constantza Harbour" held on the September 12, 2005, in the customs premises of Constantza.

C. International Cooperation

1. The 2005 AG Plenary thanked Romania for its work in producing a CD containing information on AG participants' export controls and a booklet commemorating the AG's 20th anniversary, and noted that these are useful tools for outreach activities.

2. At 2005 NSG Plenary Romania reported further on its survey regarding shipping and brokering information, for which Romania has distributed an information CD to interested PG's.

3. After the accession treaty was signed Romania has become observer both in Dual-Use Working Group and Article 18 Coordination Group. The participation in these groups will enable Romanian authorities to follow more closely and benefit of the forthcoming amendment process of the control lists and the expected improvements in transparency and harmonisation of export control process within the EU. Romania has access now to the pool of experts which can give advice in difficult cases of assessing licence applications, in case of expertise need for identification of items/classifications.

4. As recognition of the fact that Romanian export control system effectively ensures the principles and guidelines of international export control regimes, that Romania export legislation in the field of dual use items is very much aligned to the EU legislation are the numerous invitations to participate, as lecturers, in the international seminars organized in the region:

- Bosnia – Herzegovina, November 18-20, 2004.
- Bosnia – Herzegovina, December 7-9, 2004
- Albania, February 15-17, 2005.
- FYROM, April 19-21, 2005

5. Romania has continued to be an active player within the regional cooperation initiatives: Border Defence Initiative/ Black Sea Border Security Initiative (BDI/BSBSI), South East Europe Cooperation Initiative (SECI).