

DEVELOPMENT OF THE REGULATORY FRAMEWORK FOR EXPORT CONTROL OF DEFENSE-RELATED PRODUCTS

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Abstract

The export control system is very important part of national security. Export Controls have the potential to severely limit the research opportunities of university faculty and their students and staff, as well as to prevent international collaboration in certain research areas. Non-compliance with export controls can result in severe monetary and criminal penalties against both an individual as well as the university, and can result in the loss of research contracts, governmental funding, and the ability to export items. The purpose of the report is to show the Development of the regulatory framework for export control of defense-related products in Bulgaria.

Key words: security, law, export control system, national security

INTRODUCTION

It is important to understand that the strengthening of arms controls in Bulgaria was largely the result of sustained pressure from the international community. The pressures came from NATO, the EU, the US, the UN and international NGOs. US based Human Rights Watch has been one of the leaders in this effort. Its 1999 report, *Bulgaria: Money Talks – Arms Dealing with Human Rights Abusers*, reported Bulgarian exports to war-torn countries such as Angola, Peru and Ecuador, to separatist forces in southern Yemen and West Bengal, to genocide perpetrators in Rwanda, to a Colombian drug cartel operating in the US, to Congolese rebels in the Democratic Republic of Congo, and to human rights abusers in Uganda, Sierra Leone, and Burundi (Human Rights Watch, 1999).

Pressure also came from the UN. In 2000, the UN Security Council Committee investigating violations of the Security Council sanctions regime on Angola's UNITA forces found that Bulgarian-made weapons were sold to UNITA rebels under fake end-user certificates between 1997 and 1999. Although the Bulgarian government may have been unaware of the final destination, lax arms controls were used by brokers to export the arms. (United Nations, 2003)

The most effective pressures came in the context of EU enlargement and NATO accession. In its annual Regular Report for 2000 on Bulgaria's progress towards EU accession, the European Commission called for revisions of the legislation "to ensure tighter controls on trade in arms and clearer division of responsibilities between institutions to eliminate potential sources of conflict of interest." (European Commission, 2003)

EVOLUTION OF THE EXPORT CONTROL SYSTEM

The current Bulgarian export control system was established in 1995–1996 with the 1995 enactment of the Law on the Control of Foreign Trade Activity in Arms and in Dual-Use Goods and Technologies (LCFTADGT). In 1996, Bulgaria acceded to the Wassenaar Arrangement controlling exports of weapons and sensitive technology to countries of concern.

Bulgaria formally aligned itself to the EU Code of Conduct on Arms Exports on 3 August 1998 and committed itself to abide by all guidelines, decisions and positions related to arms transfers taken by the EU. In December 1998, Bulgaria made a political commitment to the EU Joint Action on SALW and in November 2000 it signed the OSCE Document on SALW. Bulgaria is also a member of the Australian Group and the Group of Nuclear Suppliers, and applies in full the rules of the Missile Technologies Control Regime.

Following the recommendations of the European Commission, in July 2002 the National Assembly passed major amendments to the LCFTADGT. A new Regulation on the Implementation of the law was also adopted.⁶⁶ When the amendments to the Law were being discussed, a suggestion was made to change the structure of the export control system by establishing a State Commission within the Council of Ministers that would exert control over arms exports. The government and the opposition did not agree on its format and it was decided that the amendments would be enacted before the NATO Summit in Prague without creating a State Commission.

STRUCTURE OF THE EXPORT CONTROL SYSTEM

Bulgaria's export control system consists of a system of laws, regulations, administrative procedures and enforcement institutions and mechanisms designed to achieve the following four objectives:

- Observance of Bulgaria's international obligations;
- Control over the manufacture, storage, transfer and possession of ADUGT;
- Prevention, combat and eradication of illicit manufacturing and transfer of SALW;
- Providing a favorable economic climate for the defense industry.

The control system has a three-level structure :

(1) Companies are first required to obtain a license to trade in arms and dual-use goods and technologies. This license is issued by the Interdepartmental Council on the Issues of Military Industrial Complex and Mobilization Preparedness of the Country (the Council) within the Council of Ministers.

(2) Once a company has the trading license, it needs to obtain a permit for every single transaction that entails export, import, transit, and re-export of arms or dual-use goods. The permit is issued by the Interdepartmental Commission on Export Control and Non-Proliferation of Weapons of Mass Destruction (the Commission) within the Ministry of Economy.

(3) The company is subject to a number of additional controls and permits that include:

- A permit from the Control of Hazardous Devices Office of the National Police Service.
- Inspection by the Customs Agency and National Security Service at specific border crossings.
- Monitoring by the intelligence agencies within the Mol and the MoD.
- Monitoring of the export by the export control specialist within each licensed company.
- The cargo shipping company also needs to be licensed by the Interdepartmental Council to transport arms to and from the territory of Bulgaria.
- Defense and arms trade companies under the MoD are obliged to obtain personal approval for all transactions from the Minister of Defense.

The stringent implementation of such a system of arms export controls is a task requiring significant administrative and financial resources, in addition to skilled and experienced personnel. The low pay in the government administration and the lack of personnel development policies in most government departments often result in a brain drain towards the private sector. This is one of the greatest challenges for the relevant institutions. It takes years to create an expert in export control. When such an expert departs it is difficult to find a skilled and experienced replacement. Most of the relevant institutions lack sufficient administrative capacity in terms of the number of staff, their qualifications and skills (professional, linguistic, etc) and the overall unit structure. When the limited financial resources of state institutions are added to the picture, it becomes clear that the application of the highest standards in this field is not an easy task.

Controls on arms trade companies and brokers

All companies that import and export arms, those that *export* (but not import) dualuse goods and technologies (DUGT), those that ship arms, and brokers trading in ADUGT need to obtain licenses from the Interdepartmental Council. At the first level, the control concerns the reliability and solvency of the licensed agents. To grant the license the Council checks the reliability of the company by examining:

- The reliability of storage facilities for ADUGT;
- The adequacy of organizational mechanisms for protecting classified information;
- Compliance of foreign companies with the laws of the country of their registration.

The Ministries of Economy, Defense, Interior, Foreign Affairs, Finance and Justice combine to co-ordinate the assessment of the reliability and solvency of the license applicants, including foreign companies. The main advantage of this procedure is that preliminary control and licensing of all dealers, shippers and brokers is carried out even before the preparation for a specific transaction begins.

A growing number of private brokers conduct transfers and play a crucial part in determining the amount of arms legally exported. One of the most significant developments in the amended law was the introduction of controls on brokering.

It should be noted that it is sometimes necessary to plan additional resources for items in a limited batch. (Lichkov, N. 2015)

Scope of the LCFTADGT

The LCFTADGT excludes from its scope the control of arms or ammunition belonging to the Bulgarian Armed Forces and foreign army and police contingents passing through and during their stay on the territory of Bulgaria for peacekeeping and humanitarian operations, training or competitions. These transfers are exempt from licensing because they are initiated under the jurisdiction of international law and are subject to ratification by the National Assembly.

As a result of political, economic and military changes in the world, foreign trade in products related to defense (PRD) is among the most heavily monitored and supervised activities at national and international level and is an important component of the national security of individual countries.

The dynamic development of the control system of foreign trade with PSO in Bulgaria over the last decade conditioning mainly from the country's accession to the North Atlantic defensive alliance (NATO) in 2004 and the European Union (EU) in 2007. It was last ten years They are a major step forward for Bulgaria, which by causing condemnation regarding arms shipments into regions with sharp conflicts and systematic human rights violations, it becomes a

highly valuable partner and member of NATO and the EU. This is certainly evidence of the rapid progress of legislative reform that has been achieved mostly under the effective impact of the EU and NATO. The introduction of the Law revealed that most brokers that had to be licensed were registered abroad, particularly in offshore zones. Such zones, in addition to being tax havens, often have lax legal environments. The Law, thus, allows the law-enforcement agencies to seek and obtain information about the owners of off-shore companies before granting licenses.

End-use(r) control

Stringent control over the declared end-user is of crucial importance when authorizing an export transaction. The main ways for arms to circumvent the law and reach proscribed end-users is by using false documentation, or through the unauthorized re-transfer of legally acquired arms. The 2002 amendments to the Law included new provisions to improve identification of end-users. Every transaction requires end-use(r) certificates. The exporting company or broker needs to provide a certificate that the end-user has obtained from its own national authorities. This certificate is verified by the Ministry of Economy (in consultation with the recipient country's import control authorities), the MFA (through diplomatic means), and the Mol and the MoD. The end-use(r) could be changed only with the agreement of the Commission. The same applies if the end-user changes its broker. (Zakov D, Ivanov L 2005)

Control on the origin of goods

The companies importing, re-exporting, or transiting goods are required to submit evidence to the Commission of the origin of the goods. These documents are examined by the Ministry of Economy, the MFA, the Mol and the MoD.

Transit shipments

In Bulgaria transit shipments of arms are also subject to regulation. Each shipment passing through Bulgaria's territory needs an authorization by the Commission. The company or the broker must provide the Commission with export permits from the country exporting the arms, as well as permits for the import and further transit of the arms. The Commission has only ten days to check the validity of the presented documents and to provide an answer to the applicant.

Additional control mechanisms

The export control system provides for an additional three sub-levels of control. Firstly, the Commission has issued a decree requiring the licensed companies to establish an internal control system to ensure compliance with the law. Designated employees will be responsible for each transaction's compliance with the export control regime. They must be members of the management boards, owners or partners. This is to counteract the practice of appointing short-term officeholders whose lack of experience could be used as an excuse for illegal transactions, or who could become the scapegoat when a crime is detected. Secondly, upon obtaining the arms export permit, the exporting company must obtain a permit from the Control of Hazardous Devices Office (CHDO) within the National Police Directorate. Thirdly, the cargo can only be transported through shipping companies licensed by the Council to transport arms to and from the territory of Bulgaria (The 'Tracker' Export Control Information System 2003)

SPECIFIC ROLES OF THE CONTROLLING BODIES

The Interdepartmental Council

The Interdepartmental Council was set up in 1993. Besides being a licensing body, it designs and implements the state's policy on manufacturing and trading in arms and dual-use goods. The Council is responsible for the mobilization preparedness of the country.⁹⁰ In this role it coordinates the management of mobilization reserves, and determines the level of preparedness of companies to convert to military production in case of mobilization. The Council carries out the following specific activities in controlling trade in ADUGT:

- Issuing licenses for manufacture and export of ADUGT.
- Maintaining a register of persons licensed to conduct foreign trade and transport arms.
- Acting as arbiter in those circumstances where consensus on an export permit application cannot be reached within the Commission and the case is referred to the Council.
- Coordinating nominations of members to the management and control authorities in the state-owned arms manufacturing and trading companies and submitting to the Council of Ministers recommendations for the restructuring of such companies.
- Advising on the inclusion of new products in the List of ADUGT.
- Advising on issues related to Bulgaria's membership of the Wassenaar

Arrangement, the OSCE, the Nuclear Suppliers Group, as well as to its commitments within the Australian Group, and, among other control regimes, the Missile Technologies Control Regime.

The Council is chaired by the Deputy Prime Minister and Minister of Economy. Its members are the Deputy Ministers of Economy, Foreign Affairs, Defense, Finance, Interior, Transport and Telecommunications, Regional Development and Public Works, and Energy, as

well as the Director of the National Intelligence Service and the Deputy of the General Staff of the Bulgarian Armed Forces.

National Police Service

After the Commission has granted an export permit companies must obtain additional permits from the National Police Service's Control of Hazardous Devices Office (CHDO). The controlling activities of the National Police Service are established in the Law on Control of Explosives, Firearms and Ammunitions. In its export-control role the CHDO examines end-user certificates so that arms are not exported to embargoed destinations or countries of concern. To receive the CHDO permit the exporting companies need to submit documents specifying the type and quantity of ADUGT produced for export, the country of origin/destination, the border post where the export or import will take place, the identification numbers of the individuals carrying out the transaction and the details of the security arrangements for the transportation of the materiel. At the border, the goods are checked by the National Border Police Service, while Customs Agency officers fill out the control slip of the police permit and with it notify the Police Directorate that the export has taken place. In its role of controlling SALW domestically the CHDO also issues end-user certificates for arms purchased by the Mol or to dealers importing firearms and ammunition for civilian purposes. In addition, it issues permits for all imports, domestic production, transiting, usage, testing, and storage. CHDO is also in charge of the storage and destruction of illegal SALW that have been confiscated. There are no known cases of large-scale arms destruction by CHDO. Instead, in January 2003, the Mol decided to auction 1350 confiscated SALW.⁹⁷ Such actions contradict Bulgaria's commitment under the UN's Program of Action that calls for the destruction of all confiscated weapons. Likewise, the OSCE Document on SALW stipulates that all surpluses are, by preference, to be destroyed. The government has not reported violations of the Law on the Control of Explosives, Firearms and Ammunitions by companies trading with registered entities.

The MoD

The MoD became more actively involved in regulating arms trading after it was revealed in October 2002 that *Terem*, a state-owned company with a trading license, which is accountable to the Ministry and monitored by the Deputy Minister of Defense, was caught violating export controls. As a result of this latest scandal, the Minister of Defense ordered that every foreign export transaction of an MoD defense company would need his personal approval. Due to the low volume of export transactions, this measure provides an additional level of export control.

The MoD companies were required to keep a register of all deals and report weekly to the Minister of Defense for approval. The MoD was planning to organize a training course for the marketing departments of its firms to inform and educate them on the relevant national legislation on foreign trade in ADUGT and on the international control regimes. The MoD has also stated its intent to appoint export control specialists in all of its manufacturing and trading companies.

The Military Police and Military Counterintelligence Security Service at the MoD have the task of countering threats to the MoD's integrity and to national security. In particular, it prevents and counters illegal activities of military personnel, including involvement in arms theft, illicit arms trading, illicit manufacturing and distribution of hazardous devices, weapons of mass destruction or strategic raw materials.

Two members of the MoD also participate in the Interdepartmental Commission. Structurally, this could represent a conflict of interest because the MoD controls *Terem* and *Procurement & Trade* (responsible for selling MoD surpluses). In reality though, no specific cases have been detected where MoD company interests have taken precedence over export controls.

ESSENTIAL ELEMENTS OF AN EFFECTIVE EXPORT CONTROL SYSTEM

To effectively implement an export control system, a country must exhibit a broad national commitment to the endeavor. This commitment is first illustrated by making the political decision to adhere to international nonproliferation norms, as defined by various multilateral regimes, and engage solely in responsible arms transfers.

Second, a nation must establish a legal authority to control the export of defense-related and dual-use goods and technologies. This authority would adhere to six legal principles:

- Comprehensive Controls
- Implementing Directives
- Enforcement Power and Penalties
- Interagency Coordination
- International Cooperation
- Protection against governmental dissemination of sensitive business information.

Third, a country should implement regulatory procedures to support export control laws and policies. These procedures should establish clear lines of authority and provide for a list of controlled items. The control list should adhere to international norms (multilateral regime lists and their associated catch-all controls). The regulations should be clear and easily accessible to exporters in their description of licensing and enforcement policy. The designated authority

administering the regulatory regime should review license requests for completeness and clarity. The regulations should encourage transparency and predictability of governmental decision making, and should give sufficient room for exceptions to policy in the interest of the government.

Fourth, proper enforcement measures should be built into the system. Preventive enforcement is essential, and should include established procedures related to export license applications (i.e. screening the proposed item, quantity, end-use and all parties involved in the transaction for any potential export) and compliance mechanisms (i.e. working in partnership with industry to educate them on how and why -- to monitor and control their own export activity). The ability and authority to interdict and investigate illicit exports are necessary to implement an effective export control system. International cooperation can ensure full compliance with export legislation. (<https://www.state.gov/strategictrade/overview/index.htm>, 2010)

ARMS EXPORTS FROM BULGARIA

Bulgaria has exported weapons worth 642.5 mln. Euros in 2015, according to the annual report of the Interdepartmental Commission on Export Control at the Ministry of Economy. This represents an increase of approximately 59% compared to the previous 2014 years. Interdepartmental Commission has issued 697 permits for export and transfer totaling 1.402 bln. Euro. In 2014 exports of arms production by Bulgaria was worth 403 mln. Euros. The country exported by large public and private traders and producers as "Kintex" VMZ "Arsenal", "EMCO", "Apollo Engineering" and others. Increased arms exports in 2015 largely due to the many military conflicts, fighting terrorism and rearmament. Traditionally, Bulgaria exported special production mainly to the conflict points in Africa and the Middle East.

Most of the exports of arms production is back to the Middle East. There are permits issued for exports to 610 mln. Euros and has made exports to 282 mln. Euros. The main client of Bulgarian arms companies, as well as a year earlier, remains Iraq, where orders have doubled. The state has made purchases worth 159.6 mln. Euros. against 80.1 million. last year. The country bought weapons, ammunition, missiles and ground vehicles. The second volume buyer is back in the region - Saudi Arabia, which has bought weapons for 92.4 mln. Euros. Bulgarian weapons are bought in large transactions and Israel, Qatar and the United Arab Emirates.

India continues to be one of the biggest markets for Bulgarian producers with orders to 58.5 mln. Euros last year, Uganda orders for 30.7 million. Euro is also one of the major export destinations for weapons in 2015 to Nigeria departed under arms to 16.5 mln. euros, followed

by Algeria, where they bought weapons and ammunition to 15.6 mln. euros. In 2015, South Africa - 7.5 mln. Euros. Chile have placed orders for body armor for 10.1 mln. Euros and Uzbekistan shopped weapons of 8.9 mln. Euros.

Bulgarian companies have made applications for exports to 16.5 mln. Euros for Russia in sales of around 10 mln. Euros the previous year, but he never was carried out and in the column exports to Russia no data. However, exports of weapons of Ukraine was 16.6 mln. Euros, are not fulfilled all requests that were more than 27 mln. Euros. In 2014, exports to Kiev was around half a million euros. Most Popular in Ukraine were bombs, torpedoes and missiles, ammunition and fuses and electronic equipment.

CONCLUSION

In order to ensure compliance with export controls, it is critically important for government personnel to identify when their activities may trigger export controls. When export controls apply, individuals must take the appropriate steps to obtain any required governmental licenses, monitor and control access to restricted information, and safeguard all controlled materials. The present study can serve to examine the problem not only at national but also at European level.

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