

METHODOLOGICAL STANDARDS

FOR THE AUTHORISATION OF LEGAL PERSONS AIMING TO CARRY OUT FOREIGN TRADE OPERATIONS WITH STRATEGIC ITEMS, ON THE FOUNDATION OF THE GOVERNMENT EMERGENCY ORDINANCE NO. 158/1999 REGARDING THE STRATEGIC ITEMS EXPORTS AND IMPORTS REGIME

CHAPTER 1

General provisions

Article 1

The National Agency for Control of Strategic Exports and of Prohibition of Chemical Weapons, hereinafter called *Agency*, delivers authorizations at interested legal persons' request for the performance of foreign trade operations with strategic goods, in accordance with the provisions of the Government Emergency Ordinance no. 158/1999 on the regime of exports and imports of strategic goods.

Article 2

The authorization for the performance of foreign trade operations with strategic goods, hereinafter called *authorization*, is the document to certify that the bearer legal person complies with the necessary conditions to carry out the following operations in accordance with norms, standards and recommendations of the regime for control of exports and imports of strategic goods:

- a) the import, export, including the re-export and any other commercial operations of foreign transfers, irreversibly or temporarily;
- b) operations carried out with foreign partners which refer to sales and purchases without physically touching the Romanian territory.

Article 3

Legal persons are obliged to require the Agency the issue of a license for each operation mentioned at article 2, according to the provisions of article 12 of the Government Emergency Ordinance no. 158/1999.

Article 4

The solution of license applications for the export and import of nuclear products depends on the license applicant's presentation of the export and import authorization issued by the National Commission for the Control of Nuclear Activities.

Article 5

The solution of license applications of economic agents in the structure or subordinated to bodies of the national system of defense, public order and national

security, for the export or import of munitions, ammunition and other military goods, depends on the license applicant's presentation of the export and import authorization issued by the Ministry of National Defense - Munitions Department.

Article 6

The solution of license applications for the export or import of strategic goods other than those mentioned in articles 4 and 5, depends on the license applicant's presentation of the export and import authorization for foreign trade operations with strategic goods, issued by the Agency.

Article 7

The solution of license applications of other legal persons than those mentioned in article 5, for the export or import of munitions, ammunition and other military goods, depends on the license applicant's presentation of the export and import authorization issued by the Agency, with the Ministry of National Defense notification.

Article 8

Producing economic agents set up by Government decision make an exception to the provisions of article 7 regarding the obligation of obtaining the Ministry of National Defense notification, by which they may commercialize military goods and services object of their work.

CHAPTER II

Authorization requirement

Article 9

In view of obtaining the authorization for the operations and goods mentioned in article 2 and 6 legal persons shall hand in a record to the Agency containing:

- a) The authorization and engagement applications, in the format settled by Order of the president of the National Agency for Control of Strategic Exports and of Prohibition of Chemical Weapons no. 148/2001, published in the Official Gazette of Romania, Part I, no. 681/October 29th 2001, signed by the qualified person to engage the legal responsibility for the applicant society/institution (according to statutory provisions);
- b) The curriculum vitae of the person who signs the application and the engagement;
- c) The legal person setting up documents, including all further modifications, in a copy;
- d) The observation certificate issued by the Chamber of Commerce and Industry
- e) The latest book-keeping balance sheet and the financial management report, in a copy;
- f) The Ministry of National Defense notification - OCIEPS, if an authorization is required for the carrying out of foreign trade operations with goods listed in the munitions, ammunition and other military products list, subject to export and import control regime, approved by the Government Decision no. 844/2001, in a copy;

- g) The list comprising persons responsible with carrying out commercial operations with strategic goods;
- h) The legal person's manager mandate for a representative assigned to set down or to take the documents to or from the Agency;
- i) The tax anticipation bills to attest the payment of financial obligations of the legal persons to the state budget and to the social state insurances budget;
- j) The activity report regarding foreign trade operations carried out on the basis of the documents issued by the Agency and regarding other actions related to the control regime of strategic goods imports and exports. The activity report shall be drawn up when the applicant legal person has priory been authorized, being also completed with other punctual information required by the Agency;
- k) Other documents relevant for the firm's reliability, including the business plan for the year under way, concluded contracts for carrying out strategic goods transfer operations, etc.

Article 10

The record for re-authorization shall be handed in 60 days before the expiring term of the under way authorization.

CHAPTER III **Authorization procedure**

Article 11

1. The term for solving an authorization application is 60 days maximum since the date of the setting down of the complete documentation to the Agency.
2. The authorization applications for the carrying out of import operations with strategic goods, other than those sensitive and very sensitive ones, are to be solved within 30 days since the date of the setting down of the complete documentation to the Agency.

Article 12

Within the 60 days term the Agency verifies the documents in the authorization record and undertakes the following actions:

1. Synthesizes and assesses the way of using the authorizations and licenses issued by the Agency;
2. Assesses the way of representation and participation of the applicant legal person to the demonstrations (activities) and seminars organized by the Agency, the capacity of information and conformation with the legal standards of the control regime, as well as the participation of persons responsible with the export control to the activities of preparation organized by the Agency;
3. Requires, according to the case, the necessary information from the institutions belonging to the national system for control of exports and imports

of strategic goods in view of establishing the opportunity to issue the authorization;

4. Invites the representatives of the applicant legal person to an interview in order to analyze all relevant aspects regarding the authorization;

5. Performs verifications to the applicant legal person location, directly or with the assistance of other qualified institutions for the purpose of establishing the way of ensuring the conditions to observe the legal provisions regarding the control regime of strategic goods imports and exports;

6. Informs the Inter-ministerial Council for the control of exports and imports of strategic goods and asks for a point of view from its component institutions, according to the case, in connection with the authorization application;

7. Assesses the level of knowledge regarding the embargoes and the restrictive regimes applied to the commerce with military goods and technology and to dual use goods;

8. Assesses the level of knowledge regarding the international obligations assumed by Romania in the field of non-proliferation and exports control (the Code of Conduct of the European Union regarding the arms trade, the European Union Council Regulation no. 1334 etc.);

9. Analyses, if the case, the way of performing/conforming the administrative and infringement sanctions applied by the Agency for the non-observance of the national control regime.

CHAPTER IV

The authorization application solution

Article 13

In view of solving the authorization application, the Agency takes into account the following:

1.The results of the authorization record content analysis;

2.The way of using the licenses by their bearers and the number of the applicant license applications repulsed by the Agency;

3. The result of actions stipulated at article 12;

4.The legal person experience in the field of foreign trade with strategic goods;

5. The way the legal person informs its customers and suppliers of the strategic character of goods, when the case of internal transfers especially;

6. The size of the share capital (as far as the legal persons which require authorization for operations with military goods the minimum recommended share capital represents the equivalent of 25.000 EURO);
7. The turnover and other relevant financial indexes;
8. The applicant legal person debts to the state budget and to the state social insurances budget;
9. The existence of an adequate location;
10. The committing of offences/infringements sanctioned in conformity with the legal provisions in force;
11. The creation, within the applicant legal person organization, of a team assigned with the observance of the national regime for control of strategic exports, made of personnel notified to the Agency as responsible with this domain;
12. The assessment of the management for the control of strategic exports existent in the company, especially the professional diligence, correctness, promptitude and transparency manifested by the applicant;
13. Interesting aspects regarding the participation to fairs, exhibitions or internal or international auctions and other data or information meant to outline the applicant legal person market image;

Article 14

The authorization application is repulsed or approved by order of the president of the Agency.

Article 15

The authorization application is repulsed in any of the following cases:

- a) The applicant legal person had an authorization issued by the Agency, did not carry out operations on its basis and does not prove that there are justified premises for the carrying out of such operations (for example, commercial contracts already signed);
- b) Criminal proceedings and criminal trial for the committing of some infringements regarding the non-observance of the control regime of exports and imports of strategic goods have been initiated against some persons who assume the legal responsibility or represent the applicant legal persons, according to documents put on the authorization record;
- c) The legal person's object of work does not include activities which correspond to operations of foreign trade required by the authorization application;

- d) The working period of the legal person , according to the setting up documents, has expired;
- e) The conclusive documents regarding the social location are no longer valid;
- f) The modifications of the setting up documents have not been declared and registered in the commercial account book;
- g) Other cases expressly stipulated by law.

Article 16

1. When the authorization application has been repulsed, the applicant legal person is informed of the main reasons that have conducted to the repulse of the authorization application, within 15 days since the Agency president order issue.
2. The legal person, informed of the repulse of the authorization application, may require the registration in the waiting register;
3. The legal person registered in the waiting register may require the resumption of the authorization procedure after the reason which conducted to the repulse of the application has been removed, but not sooner than 6 months sine the date of the repulse.

Article 17

In case that the authorization application has been approved, on the basis of the Agency president's order, the authorization is delivered, in which the foreign trade operations that the bearer may carry out are mentioned and the strategic goods categories that make the object of these operations.

CHAPTER V

The authorization regime

Article 18

1. In special cases, at the legal person's request, in order to solve some emergent situations, the Agency may issue authorizations for the carrying out punctual operations, by specifying the goods.
2. In the situations mentioned at paragraph 1 the validity term for the authorization is 30 days maximum.
3. These situations will be notified to the Inter-ministerial Council for the control of exports and imports of strategic goods, that will analyze and approve, case by case, the license applications for these operations.

4. After the accomplishment of the operation, the legal person in question will hand in a new authorization application in conformity with the provisions of the present methodological standards.

Article 19

In the case of a legal person who sets down an authorization application for the first time and who accomplishes the conditions stipulated in the present methodological standards, the authorization is delivered for a 6 months long period.

Article 20

1. In case of legal persons who have been priorly authorized by the Agency and who set down authorization applications, the new authorization will be issued for the operations and goods categories which have been objects of licenses issued on the base of the prior authorization or which will be object of some transfers based on firm contracts already concluded.

2. As long as the authorization issued by the Agency is valid the owner may require the extension of the authorization for other operations or categories of strategic goods.

3. In this scope the legal person in question will hand in an application for the extension of the authorization, together with the application for issuing the corresponding individual export or import license and with other relevant documents which are to justify the necessity and opportunity to extend the domain of the authorization.

4. The term necessary to solve the application for the extension of an authorization is correlated with the term necessary to solve the license application, but may not overrun 30 days.

5. The application for the extension of the authorization is approved by order of the president of the Agency.

6. On the basis of the order mentioned at paragraph 5 the old authorization is annulled and another one is issued, keeping the term limit of validity of the prior one.

CHAPTER VI **Final dispositions**

Article 21

1. The conditions taken into account for the issue of the authorization should be maintained all along the validity period of the prior one.

2. The authorization bearer is obliged to declare to the Agency any modifications appeared against the data stipulated in the authorization after its issue within 10 days maximum since its issue.

3. In the case when such modifications change the conditions on the basis of what the authorization has been issued, this is annulled and the declaration regarding the modifications may be considered as a new authorization application.

4. Only its owner may use the authorization for the aims they have been issued by respecting the limits and conditions stipulated in them and may not be ceded directly or indirectly.

5. The authorization does not guarantee the license delivery for the operations required and may not be used as a document of reliability in commercial relations.

Article 22

1. If the owner of the authorization violates the provisions of the Government Emergency Ordinance 158/1999 generating serious consequences for the strategic goods exports and imports regime and for the accomplishment of international obligations and engagements assumed by Romania in this domain, the Agency may suspend or retire the authorization according to the case.

2. The authorization suspension, annulment and retire are settled by order of the president of the Agency.

Article 23

1. The entire responsibility regarding the carrying out of authorized foreign trade operations, their economic efficiency (including the conditions of price performance and correctness) the observance of national regulations and of those of the partner and transit countries belongs to the authorization bearer.

2. The bearer is responsible for the way of using the authorization in accordance with the conditions established at its issue.

Article 24

1. In case of authorization loss, damage or theft the bearer is obliged to notify the Agency and to require the issue of a new authorization.

2. The bearer in question will present to the Agency the proof of the publishing in the Official Gazette of Romania, Part III, the loss announcement, the damaged authorization or the confirmation from the police body that investigates the theft, according to the case.

3. By order of the president of the Agency a new authorization will be delivered containing the same conditions as the lost, damaged or thieved one, which is annulled.