

(Unofficial translation)

**Government Decree No. 50/2004 (III.23.)
on**

Licensing foreign trade in dual-use goods and technologies

The Government,
- based on the authorization given by Article 26 of Act No. CXXVI (2003) on the implementation of the Community Customs Code,
and in accordance with
- the Agreement signed on January 13 1993 in Paris on the prohibition of development, production, stockpiling and use of chemical weapons and on the destruction thereof,
- the Agreement decided on June 12, 1968 by the XXII. General Assembly of the United Nations on non-proliferation of nuclear weapons and proclaimed by decree with legal force No. 12. of 1970,
- the Agreement adopted on December 10 1971 by the XXVI. General Assembly of the United Nations on the prohibition of development, production and stockpiling of bacteriological (biological) and toxin weapons and on the destruction thereof, having been proclaimed by decree with legal force No. 11. of 1975
hereby orders the following:

Effect of the decree

Article 1. The decree shall have power on the export licensing process of dual-use goods and technologies being under the effect of Council Regulation (EC) 1334/2000 of 22 June 22 (hereinafter: Council Regulation 1334/2000) on setting up the Community Control System for exporting dual-use goods and technologies and also on importing such goods and technologies from third countries beyond the European Union.

Article 2. In respect of this decree:

- a) Joint Action: the Joint Action of the Council No. 401/2000/CFSP of June 22 2000 (Common Foreign and Security Policy) in connection with control of assistance for certain military end-user operations.
- b) Dual-use goods: as specified in Article 2. (a) of Council Regulation 1334/2000.
- c) Export: as specified in Article 2. (b) of Council Regulation 1334/2000.
- d) Exporter: as specified in Article 2. (c) of Council Regulation 1334/2000.
- e) Export statement: as specified in Article 2. (d) of Council Regulation 1334/2000.
- f) End-user: any person who/which actually uses the dual-use goods exported in accordance with this decree.
- g) Addressee: any person who/which imports the dual-use goods according to the export-licensing process specified herein and who has the right to transfer the proprietary rights.
- h) Import:
 - ha) a commercial deal, when goods different from "community goods" as specified in Article 4 paragraph (7) of Community Customs Tariff Code are imported into the territory of the Republic of Hungary;

- hb) goods of origin outside the Community Customs Territory imported for active processing as specified in Article 114 of Community Customs Tariff Code, goods for temporary import as specified in Article 137 of Community Customs Tariff Code, returning goods which were previously exported for passive processing as specified in Article 145 of Community Customs Tariff Code and also return-goods as specified in Article 185 of Community Customs Tariff Code;
- hc) transferring software or technology from territories outside the Community Customs Territory to the territory of Hungary by electronic means, fax or telephone.
- i) Importer: any individual or legal entity named as subject of the import statement, i. e. the entity being the contracting partner of third-country party outside the European Community at the time of accepting the statement and is entitled to perform the transport of the goods from territory outside the European Community Customs Territory into the territory of the Republic of Hungary. In case no import contract has been signed or the contracting partner is acting on behalf of someone else then the authorization for transporting the goods into the territory of Hungary will be decisive; beyond the foregoing a person or legal entity deciding to import software or technology into the territory of Hungary by electronic means, fax or telephone, shall be considered importer.
- j) Customs territory of the Community: the territory specified in Article 3 of Community Customs Tariff Code.
- k) Ultimate Consignee: a person or entity who/which makes a statement on future using the imported goods and technology exclusively in harmony with the terms and conditions set forth in the statement.
- l) End-user Statement: the statement made by the Final Addressee according to Article 5 Paragraph (3).
- m) Broker: a person or entity acting for sale and purchase of dual-use goods among "third countries" including arrangements of the deals, mediation between the contracting parties, notes on business opportunities both for buyer and seller, and also sale and purchase on his/her/its own.
- n) Service: any and all technical assistance related to repair, development, manufacturing, assembling, quality control, operation and maintenance of dual-use goods or any other technical service.
- o) Competent Authority: Office for Export control and Prohibition of Chemical and Biological Weapons (hereinafter Office) operating under the authority of the Bureau of Licensing and Administration of the Ministry of Economy and Transport (hereinafter Bureau).
- p) Transfer: transfer of dual-use goods specified in Annex IV to Council Regulation 1334/2000/EC within the Customs Territory of the Community.

The Competent Authority

- Article 3.** (1) The Office as Competent Authority operating within the framework of the Bureau is entitled to execute this decree, to issue export licenses for dual-use goods, and also to control the import of such goods from third countries outside the European Union into Hungary and to issue International Import Certificates.
- (2) Further, the Office is also entitled to control the preliminary actions related to the export and distribution of dual-use goods and all activities related to the further phases.
- (3) The Office holds consultations specified in Council Regulation 1334/2000.

Part I

Licensing export of dual-use goods and technologies and control of certain technical assistance of military purpose

Article 4. (1) Types of export licenses for dual-use goods

- a) Individual Export License,
- b) Global Export License,
- c) National General Export License,
- d) Community General Export License.

(2) Requests for export licenses specified in the above Section (1) shall be filled in and submitted to the Office in the community form published as Annex III. to Council Regulation 1334/2000. The form shall be filled in completely and signed by the official representative of the exporting company. If the application is filled in incorrectly or incompletely, the applicant will be given the chance to correct and/or complete it. The applicant shall be responsible for the true contents of all data and information contained in the application and the attached documents.

(3) The Office will register the persons willing to make licensed exports. The registered exporter shall inform the Office on any changes of the registered data with no delay.

(4) The Office will pass a resolution on the application within thirty days.

(5) The documents of the completed export licensed in accordance with the above Section (1) shall be saved and stored for minimum three years starting from the end of the calendar year in which the deals were made. The registration shall be kept in accordance with the legal rules and the Office will check or have checked it.

Individual Export License

Article 5. (1) For exporting dual-use goods listed in Annex I. and IV. of Council Regulation 1334/2000 the Individual Export License for types and categories of dual-use goods and technologies valid for a single exporter and a single end-user is necessary.

(2) The individual export license is valid for one year and can be extended once for one more year on the basis of an application for extension submitted thirty days prior to its expiry.

(3) An End-user Statement (hereinafter: Statement) is to be attached to the application. The Statement shall include:

- a) the exact name of the end-user or the end-user institution, the unambiguous specification of the principal seat and the activity(-ies);

b) the description, quantity and value of the imported product, the substantial parts or a copy of the related contract;

c) the specification of the civil use of the product and the exact destination of it;

d) an explicit commitment that the imported goods will not be re-exported, passed over or diverted on the way.

(4) The official representative of the end-user shall date and sign the Statement and place stamp on it. Should the Office find it necessary, the competent foreign authority and/or the Hungarian official representation shall counter-sign the Statement.

(5) The Office may request the International Import Certificate and/or the Statement certified by the end-user's appropriate organization abroad.

(6) Beyond those specified in Sections (4) and (5) the Office may request the submission of special documents which are indispensable for making decision about the application.

(7) The Individual Export License may be subject to special conditions as well and the Exporter may be obliged to meet special conditions specified by the Office and set forth in the license itself.

Global Export License

Article 6. (1) For exporting dual-use goods listed in Annex I. and IV. of Council Regulation 1334/2000 the Global Export License for types or categories of dual-use goods and technologies valid for a single exporter and for one or more destination countries is necessary.

(2) Global Export License may be issued for maximum three years. This can be extended once for one more year on the basis of an application for extension submitted thirty days prior to its expiry.

(3) Global Export License may be issued only to applicants with sufficient (at least three years) export control expertise.

(4) A statement signed by the representative of the exporter should be attached to the application. In this statement the exporter should assume the obligation to meet the conditions below for all export deals:

a) the license should be used exclusively for dual-use goods and the specified destination countries;

b) the identification data of the Global Export License (ref. number and date) shall be indicated on the invoices and way bills;

c) the commitment statement of the addressee and/or the end-user stating that the dual-use goods involved in the contract or order will not be re-exported, passed over or diverted on the way and will be used exclusively for civil purposes shall be acquired on the date of concluding or verifying the agreement.

(5) Within thirty days after the end of the calendar year the exporter is bound to submit a summary of the export deals completed in accordance with the Global Export License. This summary shall include: the substantial data of the invoice and the contract, the amount and value of the sold goods, the referenced group of goods and sub-categories, the related customs tariff codes, the destination countries, the detailed data of the addressee and the end-user, the date of sale, the type (final, temporary) of export.

National General Export License

Article 7. (1) For exporting dual-use goods listed in Annex I. and Part I. of Annex IV. and for transferring dual-use goods and technologies listed in Part I. of Annex IV. of Council Regulation 1334/2000 within the community the National General Export License is necessary.

(2) The National General Export License is valid until not withdrawn.

(3) The statement specified by the annex 1. to this decree shall be indicated on the way bills related to exports of dual-use goods made in accordance with the National General Export License.

(4) Within thirty days after the end of the calendar year the exporter is bound to submit a summary of the export deals completed in accordance with the National General Export License. This summary shall include: the substantial data of the invoice and the contract, the amount and value of the sold goods, the referenced group of goods and sub-categories, the related customs tariff codes, the destination country, the detailed data of the addressee and the end-user, the date of sale, the type (final, temporary) of export.

Community General Export License

Article 8. (1) For exporting dual-use goods and technologies and destination countries listed in Annex II. to Council Regulation 1334/2000 a Community General Export License is necessary in accordance with the procedures detailed in Article 6. of Council Regulation 1334/2000. The export based on the Community General Export License may be arranged under certain conditions and also in consideration of the provisions of Annex II. to Council Regulation 1334/2000.

(2) The Community General Export License is valid until not withdrawn.

(3) The statement specified in annex 2. of this decree shall be indicated on the way bills related to exports of dual-use goods made in accordance with the Community General Export License.

(4) Within thirty days after the end of the calendar year the exporter is bound to submit a summary of the export deals completed in accordance with the procedures of the community general export license. This summary shall include: the substantial data of the invoice and the contract, the amount and value of the sold goods, the referenced group of goods and sub-categories, the related customs tariff codes, the destination country, the detailed data of the addressee and the end-user, the date of sale, the type (final, temporary) of export.

Decision on the application for export license

Article 9. (1) The Office will issue the licenses after having the matter checked at the Ministry of Foreign Affairs and, depending on the subject, at the Ministry of the Interior, the Hungarian Customs and Finance Guard, the National Atomic Energy Agency and the competent national security services.

(2) Licenses under Article 4. hereof may not be issued, or may be withdrawn or suspended if:

a) conditions set forth in Article 8 of the Council Regulation 1334/2000 are not met;

b) the exporter and/or its business partner(s) breach local or international regulations, and/or act against those;

c) the exporter does not meet any condition related to the license or submits untrue data;

d) the issuance of the license would violate or endanger the fulfillments of commitments under international non-proliferation regimes and other international agreements of the Republic of Hungary or its national security interests;

e) the applicant does not properly operates its internal export control system approved by the Office.

(3) A license relating to export and intra-Community transfer of dual-use nuclear goods and technologies may be issued only in consideration of the in-advance professional point-of-view of the National Atomic Energy Agency.

Licensing goods not listed in Annex I. of Council Regulation 1334/2000

Article 10. In accordance with Articles 4 and 5 of Council Regulation 1334/2000 the Office may extend the licensing procedures to the export of dual-use goods not listed among the goods in Annexes of Council Regulation 1334/2000.

Intra-Community transfers

Article 11. (1) The intra-Community transfer of dual-use goods listed in Annex IV. to Council Regulation 1334/2000 is bound to licensing.

(2) The intra-Community transfer of dual-use goods listed in Part I. of Annex IV. to Council Regulation 1334/2000 shall be arranged according to the provisions of National General Export License, Article 7 hereof, the transfer of goods listed in Part II. requires Individual Export License.

Technical assistance for military end-use

Article 12. (1) It is forbidden to give technical assistance relating to the obligations set by the provisions hereof, chemical, biological or nuclear weapons or other nuclear explosives listed in Articles 2. and 5. of the joint action and also relating to development, manufacture, sale, maintenance, recognition, identification or proliferation of missile devices suitable to deliver the former.

(2) Technical assistance is forbidden even if it is in connection with military use other than that specified in Section (1) but is relating to a destination country which, in accordance with a common statement or joint actions of the Council, is under arms export restrictions or under arms embargo proclaimed by EOSC or the Security Council of UN. Under this section technical assistance of military end-use character shall include the following:

a) transfer of goods indicated on the list of military technology of the member states;

b) transfer of producing, controlling, or testing devices necessary for development, production, maintenance of military technology goods specified in section a) and also the transfer of spare parts thereof;

c) transfer of any semi-product to be used for the production or in the production facilities of military technology goods specified in section a).

(3) Provisions of technical assistance specified in section (1) hereof shall not apply:

a) if the technical assistance is realized in any of the countries listed in Annex II. to Council Regulation 1334/2000;

b) if the technical assistance –being supplied in the form of information- is used in public or in scientific basic research as specified by international export control regimes, organizations, and agreements;

c) if the technical assistance is delivered verbally and does not relates to product controlled by to one or more international export control regime(s).

Part II

Rules for importing dual-use goods, technologies and services from third countries outside the European Union into Hungary

Import

Article 13. Goods, technologies and services referred to the effect of Annex No. 1. to Act of Law CIV in 1997 proclaiming the Agreement signed on January 13, 1993 in Paris on the prohibition of development, production, stockpiling and use of chemical weapons and on the destruction thereof may be imported to the Republic of Hungary from territory outside the European Community with an International Import Certificate described in the Annex No. 3 hereto, if an authority of the country of origin requests so or, in respect of the given product or service, regardless of its type, the Hungarian contracting party or the Office have information indicating that those are intended to be used, partly or in full, in connection with development, production, stockpiling, operation, reconnaissance, identification, proliferation of chemical, biological, nuclear weapons or missiles suitable for delivering such weapons. It is the task of the parties to the deal to establish, whether or not the competent authority of the country of origin requests the import of the good or technology controlled by an International Import Certificate.

14. In case of dual-use goods and technologies the International Import Certificate is necessary for

- a) importing,
- b) delivering into customs-free zone, customs stores and transit zones,
- c) brokerage activities,
- d) importing technology, software, technical data by e-mail, on disk, by fax, or on any other electronic means.

Inter-Ministerial Committee on Non-Proliferation

Article 15. (1) The Inter-Ministerial Committee on Non-Proliferation (hereinafter Inter-Ministerial Committee) coordinates the execution of tasks relating to the foreign trade in dual-use goods and technologies being under international control and also to the related contracts and the agreements on non-proliferation of weapons of mass destruction.

(2) The Inter-Ministerial Committee discusses the submitted export control issues of principle importance and forms its standpoint in that respect.

(3) The Inter-Ministerial Committee acts according to the proceeding approved by itself. The tasks of the Inter-Ministerial Committee's Secretariat will be executed by the Office specified in Article 3 hereof.

International Import Certificate

Article 16. (1) In case goods and technologies described in Article 1 hereof are imported to the territory of the Republic of Hungary and the goods are imported from third countries outside the European Union the Office shall, in order to verify

the actual import of the goods, issue an International Import Certificate specified in Article 13 hereof.

(2) Only companies registered in Hungary and the Hungarian subsidiary of a foreign company with principal seat abroad may apply to the Office for International Import Certificate after having been registered by the Office. For registration the applicant shall submit the valid registration of the competent court, the tax registration card, the official signature of its responsible representative certified by public notary, (or the certified copies of those documents), the letter of attorney for the company's appointed representative and the description of the company's own internal proceedings applied for the export, import and/or transfer within the territory of the European Union of certain, internationally controlled dual-use products.

(3) The International Import Certificate issued in accordance with the above Section (1) can be used in proceedings with the exporting country's authorities exclusively on behalf of the entity specified therein and can not be transferred to anyone else.

(4) The applicant shall notify the Office on any changes of the data contained in the International Import Certificate, the Statement by Ultimate Consignee and Purchaser and the Delivery Verification within five working days. If data contained in the documents are going to be or have been changed the Office is entitled to withdraw the certificate or consider the notification on the changes as new application.

(5) The International Import Certificate will be void if not presented to the competent foreign authority within six months from issuance.

Statement by Ultimate Consignee and Purchaser

Article 17. A Statement by Ultimate Consignee and Purchaser specified in Section b) of Attachment 3 hereof shall be attached to the application stating that the product and the technology will be used exclusively in accordance with terms and conditions therein.

Delivery Verification

Article 18. (1) If and when the customs clearance is made by a Hungarian customs office, it will validate the Delivery Verification issued by the Office in the form specified in Section c) of Attachment 3 hereof in order to certify that the products and technologies have arrived to the territory of Hungary.

(2) If and when customs office(s) of the European Union's member-states make the customs clearance of dual-use goods and technologies prior to their transport to Hungary it is the obligation of the importer to make official report to the Office on the arrival of such goods and technologies into Hungary.

Decision about the application for International Import Certificate

Article 19. (1) The application shall be submitted to the Office on the form filled in as suggested by the guide and the list of technical parameters shall be attached on request.

(2) The Office shall issue the resolution within thirty days from submission and shall inform the applicant on the issuance of the Certificate or the rejection of the

application. The Office will issue the resolution after having the matter checked at the Ministry of Foreign Affairs and, depending on the subject, at the Ministry of Home Affairs, the Hungarian Customs and Finance Guard, the National Agency for Nuclear Energy and the competent national security services.

(3) The issuance of the Certificate may be rejected or the issued Certificate withdrawn if and when

- a) the foreign party or the local end-user maintains activity against the relevant regulation,
- b) the issuance of the Certificate would contradict to the international obligations of the Republic of Hungary or would violate or endanger the fulfillment of such obligations,
- c) the applicant – with respect to the distribution of the goods and technologies – is in connection with partners mentioned in Section a),
- d) trading with the goods and technologies would violate the national security interests of the Republic of Hungary,
- e) the applicant submitted untrue data,
- f) the applicant did not keep the provisions for using the goods or technology contained in the Certificate,
- g) the applicant does not operate its internal control system properly.

(4) The International Import Certificate may be issued in consideration of the in-advance professional opinion of the National Agency for Nuclear Energy.

Article 20. Appeals against the first instance administration resolutions of the Office will be judged by the minister of economy and transport.

Data supply

Article 21. (1) Participants in the import activity of dual-use goods and technologies – including the end-users – are bound to present to the Office any and all data used for technical specification of the good or technology in question. Data on the conditions of use shall be presented at the same time.

(2) The Office may use the data received in accordance with the above Section (1) exclusively in the official proceeding and is bound to handle those as confidential information.

(3) Those taking part in the trading of dual-use goods and technologies are bound to save and keep documentation related to their applications and to present them to the controlling authorities acting in accordance with Article 22 hereof until the goods and technologies are qualified as internationally controlled ones. In case of annihilating, one-time-used or to-be-integrated goods or technologies the documents shall be saved and kept for three years from the actual use. The organization being checked shall properly prove the fact of annihilation or actual use (e.g. with record on destroying or piece-rate).

Authority supervision

Article 22. (1) The Office and the Hungarian Customs and Finance Guard is entitled to check the observance of the obligations and the provisions relating to the controlled goods and technologies contained in Part II hereof.

(2) The Office and the Hungarian Customs and Finance Guard is entitled to invite proper consulting companies and the authorized experts of the exporting country to take part in the proceeding.

(3) Upon request of the supervising organization, the origin shall be certified by documents issued by the competent organization of the selling country as specified by the Community's customs regulations.

Final provisions

Article 23. (1) This decree will enter into force on the day when the act of law on proclaiming the international agreement on accession of the Republic of Hungary to the European Union. The provisions of this decree shall apply for the cases in process, as well.

(2) Simultaneously with entering into force of this decree, the Government decree No. 61/1990. (X. 1.) and its amendments by Government decree No. 143/1991. (XI. 8.), Government decree No. 66/1992. (IV. 10.), Government decree No. 166/1992. (XII. 18.), Government decree No. 87/1994. (VI. 6.), Government decree No. 22/1999. (II. 10.) and the decree of Minister of Industry Trade and Tourism No. 31/1998. (V. 15.) and its amendment by the decree of Minister of Economy No. 28/2001. (X. 12.) shall become void.

Article 24. This decree contains dispositions requested for executing the following community regulations by the member states:

- Council Regulation (EC) No. 1334/2000 of 22 June 2000 setting up a Community control regime of exports of dual-use goods and technology,
- 2000/0401/CFSP Council Joint Action of 22 June 2000 concerning technical assistance related to certain military end-uses.

Annex 1 to Government decree No. .../2004. (.....)

Statement to be displayed on the transport documents accompanying dual-use goods being exported on the basis of National General Export License [Paragraph (3), Article 7]

"The export of these goods is based on the National General Export License and exclusively to be used for the following designated function:

These goods may not be forwarded for different designated function without the in-advance approval of the Hungarian authorities and may be re-exported in accordance with the national regulations of the given country."

Dated

Annex 2 to Government decree No. .../2004. (.....)

Statement to be displayed on the transport documents accompanying dual-use goods being exported on the basis of Community General Export License [Paragraph (3), Article 8]

"The export of these goods may be arranged on the basis of a Community General Export License and exclusively to the countries listed in Section 3 of Annex II to Council Regulation 1334/2000. These goods may not be forwarded to other countries with different designated functions without the in-advance approval of the Hungarian authorities and may be re-exported in accordance with the national regulations of the given country."

Dated

Attachment 3 to Government decree No. .../2004. (.....)

- a) Specimen of International Import Certificate
- b) Specimen of Statement by Ultimate Consignee and Purchaser
- c) Specimen of Delivery Verification

Source: <http://www.mkeh.hu/fontjog/kormrend502004en.html>