

ROMANIA
2017

**Questionnaire on Participating States' Policy and/or National Practices
and Procedures for the Export of Conventional Arms and Related Technology**
OSCE participating States are requested to provide details of:

1. Their basic principles, policies and/or national practices on the export of conventional arms and related technology.

According to the law, the Romanian control regime for exports, imports and other transfers with conventional arms and related technology shall be accomplished in compliance with:

- a) the EU Common Position 2008/944/CFSP;
- b) the obligations deriving from the implementation of arms embargoes established by the United Nations Security Council, by the European Union, by the Organisation for Security and Co-operation in Europe, or established by EU or NATO member states;
- c) the objectives of non-proliferation of weapons of mass destruction, of vectors carrying such weapons, and of other military goods used for the purpose of destabilizing accumulations;
- d) the international conventions, treaties and agreements, the non-proliferation mechanisms Romania is a party to, and other international undertakings assumed by Romania as a participating state in the international non-proliferation and export controls regimes;
- e) the principle of co-operation with the states promoting non-proliferation policies similar to Romania's policies in this field.

2. Their national legislation governing the export of conventional arms and related technology. If applicable, report changes and/or updates to the data provided in 1995, including any relevant subsidiary legislation.

1. Primary legislation

Government Ordinance no. 158/1999 regarding the control regime of exports, imports and other transfers of military goods, republished in the Romanian Official Journal, Part I, no. 601, from 26th of September 2013.

2. Secondary legislation

2.1. National Military List

Minister of Foreign Affairs Order No. 826/2017 setting up the List of military goods subject to control regime of exports, imports and other transfers of military goods (published in Romanian Official Journal, Part I, no. 427 from 9th of June 2017)

2.2. Procedures for implementing the military export controls legislation

2.2.1. General Procedures

Minister of Foreign Affairs Order No. 849/2013 for the implementation of Government Ordinance no. 158/1999 on the control regime of exports, imports and other transfers of

military goods, republished (published in the Official Journal of Romania, Part I, No. 409 from 8th of July 2013).

2.2.2. General Licenses

- General Licence No. LGIED-RO-01 dated 9 of March 2016 for temporary import and temporary transfer (from EU countries) into Romania of military goods for the purposes of exhibition or demonstration, approved by Minister of Foreign Affairs Order No. 365 from 29 of February 2016 (*published in the Official Journal of Romania, Part 1, no. 175 of 9th of March 2016*).
- General Licence No. LGTED-RO-01 dated 9 of March 2016 for the temporary transfer from Romania (to EU countries) of military goods for the purposes of exhibition or demonstration, approved by Minister of Foreign Affairs Order No. 364 dated 29 of February 2016 (*published in the Official Journal of Romania, Part 1, no. 175 of 9th of March 2016*).
- General License No. LGIFA-RO-01 dated 6 of January 2015 for the permanent import and transfer of military goods into Romania for armed forces end-users, approved by Order of the Minister of Foreign Affairs No. 2544 dated 21 of December (*published in the Official Journal of Romania, Part 1, No. 7 of 6 of January 2016*)
- General License No. LGEFA-RO-01 dated 11 of January 2017 for the permanent transfer from Romania of military goods for armed forces end-users, approved by Order of the Minister of Foreign Affairs No. 2352 dated 27 of December 2016 (*published in the Official Journal of Romania, Part I, no. 31 of 11 of January 2017*).
- General Licence No. LGIRE-RO-01 dated 7 of March 2017 for temporary import and transfer of military goods into Romania for maintenance and repair, approved by Order of the Minister of Foreign Affairs No. 285 dated 20 of February 2017 (*published in the Official Journal of Romania, Part I, no. 167 of 7 of March 2017*).
- General license No. LGTDC-RO-01 dated 15 May 2017 for permanent transfer of military goods from Romania to certified recipients, approved by Order of the Minister of Foreign Affairs No. 600 dated 21 of April 2017 (*published in the Official Journal of Romania, Part I, no. 356 of 15 of May 2017*).

2.2.3. Export control application forms (licenses, permits, international import certificates, delivery verification certificates, consultancy forms)

- Minister of Foreign Affairs Order No. 848/2013 of the for the approval of military export control documentation forms such as registration, certification, licenses and other documents as stipulated by Government Ordinance No. 158/1999 on the control regime of exports, imports and others transfers of military goods, republished (published in the Official Journal of Romania, Part I, No. 638 and 638 bis from 16th of October 2013).

2.2.4. Export controls statistics

- Order no. 2096/2014 of the Minister of Foreign Affairs on the modalities of reporting the operations with military goods, as stipulated by the Government Ordinance no. 158/1999 on the control regime of exports, imports and other

transfers of military goods (published in the Official Journal of Romania, Part I, No. 821 from 11th of November 2014)

3. Any international agreements or guidelines, other than OSCE commitments, covering the export of conventional arms to which they are a party.

- Arms Trade Treaty;
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (Firearms Protocol).
- The UN Programme of Action on small arms and light weapons provides the framework for activities to counter the illicit trade in such arms (UN PoA SALW);
- International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (ITI);
- UN Register of Conventional Arms as an Instrument to Control International Transfers of SALW.
- The EU Common Position 2008/944/CFSP;
- Initial Elements of the Wassenaar Arrangement on Export Controls of Conventional Arms and Dual-use Goods and Technologies and the documents agreed by the WA Plenaries.

4. The procedures for processing an application to export conventional arms and related technology:

- who is the issuing authority?
- what other authorities are involved and what is their function?
- who deals with compliance?

Ministry of Foreign Affairs/Department for Export Controls (ANCEX) is the national authority in the field of export controls of conventional arms.

ANCEX is responsible for the export controls policies, legislation, licensing, enforcement, compliance, outreach to industry activities and international co-operation and acts under the provisions of the Government Ordinance no. 158/1999 on the control regime of the exports, imports and other operations with military goods, republished.

ANCEX registers legal and natural persons to trade with military goods and issues individual and global licenses for exports, imports, brokering activities, international transit and transshipment. Beginning with 2014 ANCEX issued general licences for temporary transfer/import into the territory of Romania and temporary transfer from Romania of military goods for the purposes of demonstration or exhibition, permanent import/transfer into Romania and transfer from Romania of military goods for armed forces end-users, temporary import/transfer for maintenance and repairs and permanent transfer from Romania to certified recipients.

All license applications are processed and assessed in accordance with the legal provisions, on a case-by-case basis.

The license applications for export, import, transfer within EU and brokering are subject of Inter-ministry Council assessment.

The Inter-ministry Council consists of representatives from Ministry of Foreign Affairs, Ministry of National Defence, Ministry of Internal Affairs, Ministry of Economy, Customs Authority and Intelligence Services.

5. Lists of conventional weaponry under national export controls and the basis for their control. If applicable, report changes and/or updates to the data provided in 1995.

According to the law, the List of military goods subject to the control regime for exports, imports and other transfers is set up by Order of the Minister of Foreign Affairs. Currently, Minister of Foreign Affairs Order No. 826/2017 is setting up the List of military goods subject to control regime of export, import and other transfers of military goods.

Since 1996 when Romania has been admitted in the Wassenaar Arrangement on Export Controls of Conventional Arms and Dual-Use Goods and Technologies (WA), like the vast majority of the Participating States, Romania implemented as national List of military goods the basic grounds of WA Munitions List. The WA Munitions List also serves as a basis for Common Military List of the European Union.

As the WA Plenary Meetings regularly reviews and amends the WA Munitions List, the Participating States have to implement the amendments in their national list. The Romanian List of military goods, in force, includes the amendments agreed in 2015 WA Plenary Meeting.

6. Principles and national regulations on the destination or end-user of the equipment. Is there a complete *erga omnes* system or a published list of
- destinations of concern?
- embargoed countries?
- differentiation between destinations (e.g., is there any preferential treatment of (groups of) countries)?

The full respect of the international obligations assumed by Romania, primarily the international embargoes established by the United Nations Security Council is provided by the criterion 1 of the EU Common Position 2008/944/CFSP.

ANCEX has a rapid mechanism for the implementation of UN Security Council, EU or OSCE arms embargo immediately after their adoption.

The export licence applications are assessed on case-by-case bases under all criteria of the EU Common Position 2008/944/CFSP.

Romania has a national strategy for raising the awareness of civil society, defence industry and media on issues related with non-proliferation and export controls. Thus, Ministry of Foreign Affairs/Department for Export Controls (ANCEX), as the National Authority for Export Controls, has robust programs of outreach to industry, and *inter alia*, informs all registered companies about the arms embargoes and restrictive measures imposed at international or regional level.

7. Requirements for the provision of an end-user certificate in an export license application, or of non-re-exportation clauses or of any other type of certification before and after delivery for conventional arms export contracts. If applicable, please specify any verification of the end-user certificate and/or non-re-exportation clauses before and after delivery.

ANCEX accepts as support documentation of an export licence application the End-User Certificates, Import Certificates, and End-User Statements (EUC's, IIC's, and EUS's) as essential elements of the licensing assessment process.

The EUC's, IIC's, and EUS's are very important tools of the end-use/user assurances (end-user documentation) that provide importer's authority guarantees for the exporting state.

The EUC's, IIC's, and EUS's have different values in connection with the specificity of the military goods transferred (systems of conventional arms, equipment, spare parts and components) and the end-user (governmental entities, industry, commercial market).

As a general rule, for exports of conventional arms systems, including the SALW, ANCEX accepts EUCs with the re-export clause that implies the prior written approval of ANCEX.

In special circumstances, the EUCs, IICs and EUSs received as support documentation for an export licence application are verified through diplomatic channels.

According to the primary legislation, the exporter should present a Delivery Verification Certificate (DVC) to the Licensing Authority (ANCEX) in maximum 4 (four) months after the shipment/delivery of the military goods.

In some cases, ANCEX could conduct *on-site* verification to the end-user.

8. National definition of transit and transshipment (including free zones) of conventional arms, together with associated national legislation and compliance procedures.

The control provisions of the transit and transshipment with military goods are stipulated in the primary legislation on arms export controls. The primary legislation provides the following meanings for:

- *transit* – the transport through Romanian territory of military goods originating from and intended to other countries;
- *transshipment* – the operation of changing the means of transport during transit operations or during the entrance or exit operations in or from the territory of Romania.

Export control legislation is referred to the all-Romanian territory, including free zones.

9. The procedures governing companies wishing to export arms. Are companies obliged to seek official governmental authority to enter into contract negotiations or to sign contracts with foreign customers?

Romanian export control regime does not provide a prior consent for the negotiations conducted. Moreover, a contract signed between the parties does not lead automatically to an export license approval.

The registered companies are not obliged to seek official governmental authority "clearance" to enter into contract negotiations or to sign contracts with foreign customers, but usually companies request prior consultation with the authority in sensitive cases, such as exceptions provisions of the arms embargoes. However, all companies involved in any operations with military goods have to be register to ANCEX.

10. Policy on the revocation of export licences once they have been approved; please list any published regulations.

If the terms and conditions of an export licence are essentially modified (e.g. quantity, the final destination, the foreign partner, the goods, the route or serial number of SALW) or the internal situation of the final destination state has changed, ANCEX can suspend or revoke the export licence, according to the law.

The legislation referred above is the Government Ordinance no. 158/1999 regarding the control regime of exports, imports and other transfers of military goods, republished and the Order No. 849/2013 of the Minister of Foreign Affairs for the implementation of Government Ordinance no. 158/1999 on the control regime of exports, imports and other transfers of military goods, republished.

11. The penal and administrative implications for any exporter failing to comply with national controls. If applicable, report changes and/or updates to the data provided in 1995.

The Government Ordinance no. 158/1999 on the control regime of exports, imports and other transfers of military goods, republished, establishes that any violation of the provisions of the ordinance regarding transfers of military goods, as well as those on the truthfulness of declarations, represents crimes under the law, are punished according to the provisions of the Criminal Code.

Violation of the provisions of the law, unless the actions are crimes, under the Criminal Code, that constitutes an offence are sanctioned by fine from 5.000 lei to 30.000 lei.

12. Any circumstances in which the export of arms does not require an export licence.

According to the primary legislation, exception to the export controls provisions are the operations aimed at taking out or bringing into the territory of Romania, on a permanent or temporary basis, as well as the international transit and transshipments of military goods, performed in connection with Romania's participation in military missions abroad or that of military echelons of the other NATO member states.

13. Licences for temporary export (e.g., demonstrations or testing), the period allowed and any special conditions attached to the licence, including verification of return procedures.

Individual licences for temporary exports of conventional arms are assessed on multi-criteria basis and they fulfil identical procedures (End-User Certificate or Return Material Approval) like the licences issued for permanent exports. Nevertheless, the clauses included in the EUC must provide the return terms of the conventional arms. Usually, the individual licences for temporary exports are valid one year, if the clauses of return do not specify less.

In 2016 ANCEX issued the General Licence for temporary transfers from Romania of specific military goods for the purposes of exhibition and demonstration on the territory of EU Member States. According to the terms and conditions of the General Licence the military goods shall be returned to Romania in their entirety and without modifications within 2 (two) years from the date of their transfer from Romania. Proper data bases of

all operations and related documents must be kept by the companies, as beneficiaries of the general licences. The companies also submit to ANCEX their annual reports.

14. Licence documents and any standard conditions attached to it (copies to be provided).

Romanian export control documentation, was amended in 2013 through Order no. 848/2013 of the Minister of Foreign Affairs for the approval of military export control documentation forms such as registration, certification, licenses and other documents as stipulated by Government Ordinance No. 158/1999 on the control regime of exports, imports and others transfers of military goods, republished (*published in the Official Journal of Romania, Part I, No. 638 and 638 bis from 16 October 2013*). – Since 2014 no forms were amended. The forms provided in 2014 are available.

15. Different types (e.g. individual, general, restricted, full, permanent, etc.) of licences and what they are used for.

Romanian arms export control authority currently issues the following types of licences:

- *Individual licence* – granted to a registered Romanian legal person, in order to carry out an operation involving one or several military goods to or from a single foreign partner.
- *Global licence* – granted to a registered Romanian legal person, in order to carry out repetitive operations involving one or several military goods, to or from several foreign partners.
- *General license* - is used by any registered Romanian legal person in order to carry out repetitive operation involving one or several military goods to or from several importers, exporters or suppliers. The general licenses are issued by order of the Romanian Minister of Foreign Affairs and published in the Official Journal of Romania.

For conventional arms systems ANCEX issues individual licences only.

16. Advice given to exporters as to licensability, such as the likelihood of approval for a possible transaction.

ANCEX has a solid outreach to Industry program. Also, ANCEX organizes regular meetings with the managers of the Romanian exporters. Additionally, by request, ANCEX provides export control policy support.

In any case, ANCEX does not provide assurances or guarantees regarding the licensability (likelihood of license approval for a transfer or export).

As a preventive dimension, ANCEX advise the registered companies to introduce a clause in their contracts stipulating that “*contract will entry into force in X days after the export license was issued by the Romania Authority for Export Controls*”.

17. The average number of export licences issued annually and the staff engaged in the export licensing procedure.

The average number of the permanent exports licences issued annually is 1000.

The staff engaged in the licensing procedure consists of 10 members.

18. Any other relevant information pertaining to the export of conventional arms and related technology, e.g., additional laws, reports to Parliament, special procedures for certain goods.

All export license applications of SALW (including their ammunition) are assessed by the MFA/ANCEX and receive the assent from the Inter-Ministry Council on multi-criteria basis.

In certain cases the exports of SALW (including their ammunition) are subject to the monitoring process. It is mandatory for the exporters to notify to MFA/ANCEX, 5 (five) days before the export will take place, all elements of transfers, including the serial number of SALW, transport means and transportation route.

In the monitoring process involves the licensing authority, the enforcement authorities and the intelligence services.

19. Are all guidelines governing conventional arms transfers nationally published?

Romanian legislation and procedures of conventional arms are published in the Official Journal of Romania, Part I. The official website of the Romanian Authority for Export Controls (www.ancex.ro) makes available, in English and Romanian, the export control legislation, procedures and guidelines for all interested parties and useful links to organizations and documents related.