

## **Government Decree 61/1990 (XI.1)**

### **on licensing trade in certain internationally controlled goods and technologies**

The Government of the Republic of Hungary

- in accordance with Article XXI of the General Agreement on Tariffs and Trade,
- in accordance with the Protocol for the Prohibition of the Use in War of Asphyxiated, Poisonous and Other Gases and of Bacteriological Methods of Warfare signed at Geneva on 17 June 1925 (The Geneva Protocol of 1925).
- in accordance with the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction signed in Paris on 13 January 1993 and promulgated by Act CIV. of 1997,
- based on the authorisation laid down in Article 29, Paragraph (1) of Act III of 1974 on Foreign Trade and in Article 5 (2) of Act C of 1995 on the regulations of Customs Law

herewith ordains the following:

#### *The Effect of the Decree*

#### **Article 1**

(1) Internationally controlled products and technologies

may be taken out of the territory of the Republic of Hungary exclusively in possession of the License issued pursuant to the present Decree.

(2) Internationally controlled products and technologies may be imported to the territory of the Republic of Hungary exclusively with the Certificate issued on the basis of the present Decree, if

- a. the item falls under the force of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (hereinafter referred to as Convention) signed in Paris on 13 January 1993 and promulgated by Act CIV. of 1997,
- b. if that is required by the competent authorities of the country of origin or if it is prescribed by another Hungarian regulation.

(3) Irrespective of the country of origin, the following shall qualify as internationally controlled products and technologies:

- a. products and technologies listed under Annex 1 to the present Decree, in Ministerial Decree No. 31/1998. (V.15.) IKIM on establishment of Control List of internationally controlled goods and technologies amended by Ministerial Decree No. 28/2001. (X.12.) GM, and those
- b. under the Annex to Government Decree No. 121/1997 (VII.17.)

on nuclear export, and

- c. all products, technologies and services in the case of which the contracting party in Hungary possesses knowledge of an intention to use the product or technology in part or in full in relation to the development, manufacturing, warehousing, operation, surveillance, identification or proliferation of chemical, biological or nuclear weapons and missile technology suitable for launching weapons of this kind. On inquiry of the Hungarian contracting party the licensing authority is obliged to give answer, if the product, technology or service fall under the controlled field specified above.

(4) The License or Certificate specified under Paragraphs (1) or (2) hereof or Statement according to Article 7 Paragraph (6) shall be required for

- a. import and export of certain internationally controlled goods and technologies (hereinafter referred to as goods and technologies) by either commercial or non-commercial transaction;
- b. re-export of goods and technologies of this kind;
- c. delivery to and from customs-free area, customs-warehouse and transit area thereof;
- d. brokering activity with goods and technologies of this kind;
- e. publishing technology, software, technical data on internet, or exportation thereof via e-mail, floppy disc, telefax or other electronic means;
- f. their transit traffic which shall be reported according to Article 7/A.

(5) The License or Certificate specified under Paragraphs (1) or (2) hereof shall not be required for exportation and importation of goods and technologies for purposes of army exercises approved in accordance with regulations of the Parliament, performed abroad or in Hungary.

(6) Licensing is obligatory for activities within the circle specified in Paragraph (3) such as:

- a. expert and consultant activities abroad;
- b. education, training in domestic institutes and economic organisations.

In accordance with Article 3 of this Decree applications of this kind shall be filed to the Office of Export Control and Prohibition of Chemical and Biological Weapons

(7) Issuing the License shall be conditional upon meeting the provisions of Section II. of Annex 1 (Control List) to the present Decree, concerning products and technologies listed under Section I. of the Convention, concerning materials and technologies listed in Government Decree No. 48/1991 (III.27), concerning nuclear materials and technologies listed under Section II of Government Decree 121/1997 (VII.17).

(8) The License or Certificate specified under Paragraphs (1) or (2) hereof shall not be required for commercialisation of domestic and technologies for Hungarian end-users in Hungary.

(9) The Minister of Economy and Transport has the authorisation for issuing the Control List of internationally controlled goods and technologies and for amendment thereof if necessary with consent of the Non-proliferation Inter-Ministerial Committee.

## **Article 2**

The Committee shall discuss principle export control cases submitted to it by the Ministry of Economy and Transport and makes principle decisions on thereof that should be applied in the practice of the ministry obligatorily. The principles of decision-making specified by the Committee shall not contain provisions, which would place direct obligation on citizens.

### *Office of Export Control and Prohibition of Chemical and Biological Weapons*

## **Article 3**

The Office of Export Control and Prohibition of Chemical and Biological Weapons (hereinafter referred to as Office) established within the Ministry of Economy and Transport shall conduct the licensing procedure according to Article 1 hereof in the manner regulated by the present Decree.

### *International Import Certificate*

## **Article 4**

(1) The International Import Certificate (hereinafter referred to as the Certificate) shall be issued by the Office in the case of the importation of the products and technologies to the Republic of Hungary as provided for under Annex 3 in order to attest control by the Hungarian authority with respect to the trade in the product specified in the certificate.

(2) The Certificate issued according to Paragraph (1) hereof may be used exclusively in the name of the firm or person identified therein in the course of the procedure in front of the authorities of the exporter country. Any transfer of this certificate shall be null and void.

(3) The applicant shall inform the Office of any changes that may take place in the data presented in the Certificate and the related Statement of the Final Addressee and Buyer and in the Certificate of Delivery without delay. If, as a result of the change, the conditions of issuing the Certificate are significantly altered, the Bureau shall be entitled to withdraw the Certificate or to handle the report of the change as a new application.

(4) The Certificate shall lose effect if it is not presented to the appropriate foreign authority within six months from issue.

(5) If the quantity or extent according to the Certificate

a) is more than the quantity of the product or the extent of the technology transfer requested to be licensed by the authorities of the exporter country,

b) corresponds to the product quantity or extent of technology transfer requested to be licensed but the license issued does not enable delivery or only in part,

c) the importer may request his business partner to return the Certificate. To incorporate the new changes, a new Certificate may be issued.

(6) The contracting parties shall be responsible for finding out whether the authorities of the country of origin require the control of the product or technology.

*Ultimate Consignee and End-User Statement*

**Article 5**

(1) The Ultimate Consignee and End-User Statement (hereinafter referred to as the Statement) made out in the format according to Annex 4 hereof shall be enclosed with the application for the Certificate according to which the imported product and technology will be used exclusively under the conditions and in the mode specified in the Statement.

(2) In case of the transfer of the products or technologies, a Statement issued by the new final addressee or buyer shall be submitted to the Office.

*Delivery Verification Certificate*

**Article 6**

In case of the importation of the products and technologies, the customs office performing final customs clearance shall validate the Delivery Verification Certificate issued by the Office in the manner specified under Annex 5 hereof (hereinafter referred to as Delivery Verification Certificate) to verify that the products and technologies incorporated therein have arrived to Hungarian customs territory.

*Export License*

**Article 7**

(1) The application for the License shall be submitted by using the form according to Annex 6 filled in the original copy (Application for Export License).

(2) The following shall be enclosed with the Application:

a) the re-export license, the Certificate and the Delivery Verification Certificate as required by the country of origin,

b) if necessary, the technical parameters,

c) the Ultimate Consignee and End-User Statement by the user if the importer country doesn't maintained an adequate export control system, under which it could issue a Statement of Guarantee according to Article 4 (International Import Certificate) on behalf of its government,

(3) In case of export to countries according to Annex 2 to the present Decree or if the product and technology is temporarily cleared by customs (under the condition of returning it within a specified time period), the International Imports Certificate and the Ultimate Consignee and End-User Statement need not be enclosed with the application (except for Category 0 in Section II and items in Categories 1-9).

(4) The agency issuing the License shall be informed of any changes whatsoever taking place in relation to the data presented in the application for the License and the annexes thereto without delay. The same shall apply to any changes in data taking place after the issuance of the License. If, as a result of the change, the conditions of licensing have been substantially altered, the licensing authority shall be entitled to withdraw the License and to handle the notification of the change as a new application.

(5) The License shall be valid for six months from the date of issue; in warranted cases, upon request, the Office may also license a longer period of validity.

(6) The License is not required if

- a. the value of the products and technologies manufactured in Hungary to be exported or imported without the issue of the Certificate presented under Section II Categories 1-9 in Annex 1 (except dual-use nuclear products and technologies) to the present Decree does not reach HUF 500,000 and if the transaction is not part of a transaction of higher value;
- b. the product or technology cleared temporarily by customs is returned to the name and address of the original sender,
- c. the product is returned to the original sender or to other premises according to his instructions,
- d. if the products and technologies are exported by a legal or natural person or business organisation that is not a legal entity participating in the distribution of products and technologies listed under Categories 1-9 of Section II of Annex 1 to the present Decree in accordance with the separate agreement concluded with the Office and with the license issued on that basis (distributors' authorisation) to debit an amount specified in advance under the obligation to settle accounts subsequently. The issuance and retention of the validity of the distributor's authorisation shall be conditional upon the exporter setting up an internal controlling program and system satisfying the provisions of the agreement concluded with the Office; that such a system be operated and that the exporter inform the Office thereof; and the exporter guarantee inspection of the documents related to the trade administered under the distributor's authorisation (documents of contract, customs clearance, bookkeeping) to the Office as the Office requires it.

(7) The License shall be submitted to the customs office performing export control simultaneously with the application for the performance of export control. In the case according to Paragraph 5 hereof, a statement containing a reference to the relevant legislation shall be enclosed with the application for the performance of export control stating that there is no need to obtain the export license of the dutiable goods. The exporter shall submit a statement on such turnover subsequently within 30 days following the year in question to the Office. In warranted cases, the Office shall require the exporter to settle accounts out of turn. Short of such a license and statement, the customs office shall reject the declaration of goods submitted for the customs clearance of the goods.

#### *Transit*

#### **Article 7/A**

1. Transit traffic in products and technologies shall be reported to the customs office taking action using the form according to Annex 6/C hereof (Transit Statement by Exporter).
2. The acting customs office may oblige the foreigner or domestic natural or legal person as international carrier, contractor or supplier to transit area for filing end user statement if it is presumable that the product or technology is intended to be used – partly or totally for the purpose of the development, production, stockpiling, operation, reconnaissance, identification, proliferation of chemical, biological and nuclear weapons, or for delivering to the target thereof.
3. The end user certificate shall be filed in two copies to the competent customs office one of which shall be forwarded by the customs office to the Office.

4. The end user certificate must contain the name and address of the end user, the planned sphere of use of the product or technology, the method of use and the prize and quantity of the product.
5. On the basis of the end user certificate the Office can forbid transfer of the product or the technology.
6. For the period of filing and supervision of the end user certificate the product or technology may be drawn under guarding in the warehouse of the carrier or contractor. If it is not possible direct control on the items by the customs must be ordered.
7. As if it can be ascertained that the product or technology are intended to use for the purpose described in Paragraph (2) – on the basis of the Office - the customs office is obliged to refuse the transfer of the product or technology, and has to oblige the foreigner or domestic natural or legal person as international carrier, contractor or supplier to re-transport the product or technology to the establishment of the exporter on its own expense, and at the same time the customs office informs the competent customs office of exporting country.
8. The provisions of Paragraphs (1)-(7) shall have no effect on the provisions of Article 27 of the International Convention on the regulation of the order of shipping on the Danube concluded in Belgrade on August 18, 1948 promulgated by Act XIII of 1949.
9. The customs office clearing the goods and technologies for export shall submit the copies of the documents according to Paragraph (1) hereof confirmed by it, together with a monthly summary, to the National Headquarters of the Customs and Finance Guard by the 5<sup>th</sup> day of every month, which shall inform the Office of them in the form of a monthly summary by the 10<sup>th</sup> day of each month.

#### *Evaluation of Applications*

#### **Article 8**

(1) Forms shall be submitted to the Office filled in according to the instructions, upon special request together with the list of technical parameters.

(2) Within 30 days from submission of the application, the Office shall bring its resolution and shall inform the applicant whether it granted the License or Certificate or rejected the application.

3. The License or Certificate may be rejected or withdrawn if
  - a. the activities of the foreign party or of the domestic end user violate international requirements,
  - b. the License or the Certificate violates or endangers the obligations undertaken by the Republic of Hungary in international agreements or the performance of such obligations,
  - c. in relation to the trade in the products and technologies, the applicant is in contact with persons referred to under Item a) hereof,
  - d. the internal controlling system for the trade in the products and technologies is operated not in the appropriate manner or the applicant fails to meet his reporting obligations related to turnover,
  - e. trade in the products and technologies is contrary to the national security interests of the Republic of Hungary,
  - f. the applicant disclosed untrue data,
  - g. the activity performed deviates from the licensed use.

(4) If the Office refuses to issue the Certificate or the License on the basis of Items a)-c) or e) or f) of Paragraph (3) hereof or withdraws the already issued Certificate or License for reasons according to Items a)-g), it shall simultaneously publish the name of the importer, exporter, the final addressee and other persons involved in trade in the *Magyar Közlöny*. The Office shall also publish the names of natural persons who, in the course of a criminal procedure were banned from pursuing the activities subject to the present Decree in the form of a communication in the *Magyar Közlöny*.

(5) The Certificate or License (also the Distributor's Authorisation) related to trade in products and technologies belonging to Category 0 and Categories 1-9 under Section I of Annex 1 to the present Decree may be issued only with the preliminary consent of the National Atomic Energy Agency and with respect to products and technologies according to Section III, only with the preliminary agreement of the separately defined organisation (Category I) and the national security service concerned (Category II).

#### **Article 9**

The resolution on banning or on the refusal of issuing or withdrawing the License (Certificate) shall contain the reasons for the decision. In other matters, the procedure shall be governed by the provisions of the Act on the General Rules of Public Administrative Procedure with the differences according to the general procedural rules of the administration of foreign trade.

#### *Reporting*

#### **Article 10**

1. Those participating in the trade in the products and technologies also including end users shall at the time of submitting the application for the License or the Certificate disclose all the data to the Office on the basis of which the product or the technology is defined by legal regulation. They shall also disclose all the data pertaining to the circumstances of use.
2. Those participating in trading in the products and technologies shall notify the Office of the data of the person authorised to represent them in the course of the procedure (name, number of valid identity card, rank) and any changes therein.
3. The Office may only use the data submitted according to Paragraph (1) and (2) hereof exclusively for the purposes of export control and shall handle them confidentially.
4. Those participating in trade in the products and technologies shall keep the documentation related to their activities subject to licensing or reporting safe and present such documentation to the controlling agency taking action pursuant to Article 11 hereof so long as the given product or technology qualifies as internationally controlled according to Article 1 Paragraph (2) or in case of a product that is annihilated or can only be used once or will be incorporated in some other thing (utilisable product) for two years following their consumption. The fact of annihilation or consumption shall be verified by the controlled organisation in the course of on-site control (based on protocol on annihilation, material consumption standard, etc.).

#### *Control by the Authorities*

#### **Article 11**

1. The Office and the units of the Customs and Finance Guard shall be entitled to control meeting the obligations incorporated in the present Decree and other regulations pertaining to foreign trade and observation of the international requirements related to controlled products and technologies. In the course of these procedures, the general rules of public administrative procedure

and the provisions of customs procedure shall be observed.

2. The agency taking action shall be entitled to involve the authorised experts of the exporter country in its procedure or to entrust expert firms according to the provisions of the relevant international agreement to conduct the procedure.
3. Upon the request of the agency taking action, the Certificate of Origin shall be submitted.

### **Internal control**

#### **Article 11/A**

The exporter is obliged to operate an internal control system comprising registration of the export products, listing thereof in accordance with the relevant legal classification (Control List No.), designation of a person responsible for operating the internal control system.

#### *Annihilation procedure*

#### **Article 12**

#### *Closing provisions*

#### **Article 13**

1. The present Decree shall come into force on the day of its promulgation and it shall also be applied to cases in progress.
2. The Minister of Economic Affairs take action to implement the present Decree in co-operation with the Minister of Finance concerning customs issues.
3. The present Decree shall have no effect on other regulations concerning foreign trading licensing procedures.

### **Unofficial translation**

#### **Ministerial Decree 31/1998 (V.15.) IKIM**

on establishment of Control List of internationally controlled goods and technologies amended by Ministerial Decree No. 28/2001. (X.12.) GM

#### **(Summary)**

Part I.: Munitions List (Wassenaar Arrangement ML 2000)

Part II. List of Dual-Use Goods (Council Regulation (EC) 1334/2000 of 22 June 2000)

This part covers:

Category 0 – Nuclear Materials, Facilities and Equipment

Category 1 – Materials, Chemicals, "Micro-organisms" & "Toxins"

Category 2 – Materials Processing

Category 3 – Electronics

Category 4 – Computers

Category 5 – Telecommunications and "Information Security"

Category 6 - Sensors and Lasers

Category 7 - Navigation and Avionics

Category 8 - Marine

Category 9 - Propulsion Systems, Space Vehicles and  
Related Equipment

**Part III: Human Rights Items, Crime Control, and Riot Control**

and Security Service Related Items