



BOSNIA AND HERZEGOVINA - MINISTRY OF DEFENCE - BIH ARMED FORCES



# National Legal Framework – Import-Export Control, Issuance of Licenses for Weapons, Military Equipment and Dual-use Equipment, Brokering and International Standards

Bled, 03 – 05 April 2013



## Overview

- ❑ Explanation on reasons for the control of strategic trade
- ❑ Explanation on International Standards for efficient control
- ❑ An overview of the BiH legislative and regulatory program for the control of strategic trade
- ❑ An overview of the licenses for import of ammunition, transit and brokering, issued in BiH
- ❑ An overview of the “best practices” for implementation of the program



## Goals

- ❑ To explain the basics and significance of the strategic trade control
- ❑ To identify the scope of items and activities that are subject to the strategic trade control
- ❑ To identify the key international standards for an efficient program implementation



## Basics of the Strategic Trade Control

- ❑ National security
- ❑ Foreign policy
- ❑ Compliance with International Agreements and other agreed standards (for example: UNSCR 1540, EU)



## Basics of the Strategic Trade Control *Interests of State Security*

- ❑ Preventing attacks against a State by State actors or Non-state actors
- ❑ Preventing attacks against allies and friends
- ❑ Preventing programs of development and procurement of weapons in states with potentially hostile intentions
- ❑ Supporting international standards against proliferation of weapons of mass destruction (for example. Nuclear Manufacturers Group, etc.)



## Basics of the Strategic Trade Control

### *Interests of State Security*

### *(continued)*

- ❑ Promoting a technologically advanced industrial base
- ❑ Promoting regional stability
- ❑ Preventing thefts of key assets (for example: advanced technologies)
- ❑ Providing an environment that promotes economic security



## Interagency Overview: Considerations *State Security*

- ❑ Defence Policies
  - Ensuring that the export will not be used against your country or your allies.
  - Can these put your State or advisors in the military disadvantage or improve the ability of your allies?
  - Whether the export of this product will be opposite to the existing policy?
  - How this particular export will influence the balance of power?



## Interagency Overview: Considerations *State Security (continued)*

- ❑ Military-operational impact
  - What impact will have the export on the army of the importing country?
  - Whether the request is a sign of expected activity? If yes, whether this activity is something that your country support?
- ❑ Weapon Capabilities
  - How sophisticated is the product or technology? Whether a lower degree would be acceptable?
  - Is there a risk of redirection?
  - Whether the product will give an unfair advantage to the recipient country?



## Basics of the Strategic Trade Control

### *Interests of Foreign Policy*

- Includes the interests of State security, and the protection and promotion of the following values, even when they are not concerned as security issues:
  - Human Rights
  - Public Health
  - Support to Democracy



## Items and Activities that are the Subject of the Strategic Trade Control

- ❑ Dual-use
- ❑ Military
- ❑ Brokering, transit, transportation and financial services provided by individuals/companies that are under the jurisdiction of the State
- ❑ How best to implement controls for all of these areas?



## **Key International Standards Key Elements of an Efficient System of Export Licenses and Control**

- ❑ Legislative and regulatory authorizations
- ❑ The list of controlled items
- ❑ Requirements for documenting
- ❑ Checking (review) of end-users and end-use
- ❑ Application system for the issuance of licenses, which is convenient for users



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## Key International Standards

### Key Elements of an Efficient System of Export Licenses and Control (*continued*)

- ❑ Analytical review of license applications
- ❑ Procedures for inclusion of exchange between the Ministries
- ❑ Procedures for resolving conflict between the Ministries (with the possible escalation i.e. raising to a higher level)
- ❑ Timely decisions on submitted applications
- ❑ Appeal procedures for denial



## Key International Standards Key Elements of an Efficient System of Export Licenses and Control (*continued*)

- ❑ Clear guidelines regarding licensing policies
- ❑ Program for informing the industry
- ❑ Implementing measures/penalties for non-compliance
- ❑ Adequate resources for program management
- ❑ International cooperation and exchange of information



## **Items and Activities that are the Subject of the Strategic Trade Control**

### ***Challenges of the Strategic Trade Control in BiH***

- ❑ BiH mainly exports ammunition, small arms and light weapons
- ❑ However, additional focus is directed to:
  - Brokering by individuals/companies that are under the jurisdiction of BiH
  - Transit of military equipment through BiH to other destinations
- ❑ Brokering and transit cover a wider range of sensitive items from those that are a domestic product of BiH



## Requirements for Registration *Registry of Operators in Foreign Trade*

The BiH Law requires the registration of all operators in foreign trade.

All **individuals** and **legal entities** are required to register with the Ministry of Foreign Trade and Economic Relations (MOFTER) in order to be engaged in the trade of controlled goods and services.

### **Individuals:**

Can get an interim decision on the entry in the Registry only for foreign trade of items from the List of Special-use Items.

Must submit the following documents:

- ❑ A certified copy of the ID;
- ❑ Permit issued by the competent authority for the procurement of goods from the List of Special-use Items for personal use;
- ❑ Proof of payment of 5.00 KM application fee and a fee of 15.00 KM.

## Requirements for Registration *Registry of Operators in Foreign Trade* (continued)

### Legal Entity:

Can register permanently or temporary.

Must submit the following documentation:

- ❑ A certified copy of the Decision on the entry in the Court Registry or excerpt from the Law for the State institutions;
- ❑ A list of all authorized persons;
- ❑ Proof on registration/entry in the unique registry of taxpayers of the ITA, on the basis of registration for VAT and a foreign trade;
- ❑ The document is issued by the competent authority for the conduct of the registered activity in connection with the goods and services from the control lists;
- ❑ Proof of payment of 5.00 KM application fee and a fee of 15.00 KM to issue the Decision on the entry in the Registry.



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## **Key International Standards**

### ***Main International Norms Related to the Challenges in BiH Strategic Trade***

- ❑ United Nations Resolutions
- ❑ Legal and regulatory framework of the European Union
- ❑ International arms control and agreements on non-proliferation
- ❑ Guidelines for export control regime



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## Key International Standards

### *UN General Assembly Resolution 46/36 H on "International transfers of weapons" as of 6 December 1991*

- ❑ The Resolution call on all states to:
  - Eradicate the illegal arms trade
  - Control imports and exports to prevent illegal transfers of weapons
  - Implement laws and administrative machinery for regulating and monitoring transfers of weapons
  - Apply strict implementation measures
  - Harmonize controls with other states



## **Key International Standards** ***UN Reporting Requirements:*** ***Transparency in Arms, 6 December 1991***

- ❑ Imports and exports, which should be reported every year:
- ❑ Battle tanks
- ❑ Armored combat vehicles
- ❑ Large caliber artillery systems
- ❑ Combat aircraft
- ❑ Attack helicopters
- ❑ Warships
- ❑ Missiles or missile systems



## Key International Standards

### *UN Programme of activities to support the implementation of the: PoA-ISS International Monitoring Tool*

- ❑ Purpose: To identify and monitor illegal SALW
- ❑ States shall ensure that:
  - All the markings are on exposed surfaces, noticeable without use of technical aid or tools, easily recognizable, readable, durable and as far as technically possible, recoverable
  - Uniquely marking each SALW at the site where the destruction would permanently damage the weapons, made them inoperable and impossible to be re-activated
- ❑ Minimum standards of record keeping:
  - ❑ a) records on production for at least 30 years; and
  - ❑ b) all other records, including records on import and export for at least 20 years.



## Key International Standards

### *UN Programme of activities to support the implementation of the: PoA-ISS International Monitoring Tool (continued)*

- ❑ A State can initiate a request for monitoring the SALW which was found in its territory and which is considered to be illegal. Information will be given only to authorized State bodies and will be kept confidential.
- ❑ Request for monitoring should include the following:
  - (a) Information describing the nature of illegal SALW and, to the extent possible, the circumstances under which the SALW was found;
  - (b) Designation, type, caliber and other relevant information to the greatest extent possible;
  - (c) The intended use of the requested information.



## Key International Standards International Standards for Non-proliferation: *UNSCR 1540, April 2004*

- ❑ UN request that Member States prevent proliferation of mass destruction weapons, as well as means of making the same
- ❑ Complementary with agreements on non-proliferation (NPT, BTWC and CWC) and informal arms control regimes against the proliferation (AG, NSG and MTCR)
- ❑ It focuses on Non-state actors, such as terrorists
- ❑ Provides guidelines for the export of military and dual-use equipment



## Key International Standards *UNSCR 1540 Scope of Control*

- ❑ All States should take action and implement effective measures to establish domestic controls and prevent proliferation of weapons of mass destruction and means of carrying such weapons.
  - (a) Count and secure the products in the manufacture, use, storage or transport;
  - (b) Physical protection measures;
  - (c) Control of the borders control and the efforts in implementation of the law to discover, keep, prevent and fight against, including the international cooperation, the illegal trafficking and brokering;
  - (d) Control of the export, transit, reloading and re-export of products, and control of the other activities that contribute to the proliferation (for example: financing, transport) as well as establishing end-user control;
  - (e) The establishment and application of appropriate criminal or civil sanctions for violations.



## **Key International Standards**

### ***Specially Enhanced Control of the Conventional Arms Transfers***

- ❑ The Organization for Security and Co-operation in Europe
- ❑ OSCE DOCUMENT ON SMALL ARMS AND LIGHT WEAPONS (SALW), as of 24 November 2000
- ❑ This document establishes standards, principles and measures to combat illicit trafficking of SALW in all its aspects.



## Key International Standards *SALW*

- ❑ To consider while reviewing the license application:
- ❑ Human rights and fundamental freedoms in the recipient country (the products should not be used for purposes of repression);
- ❑ Considerations of regional stability;
- ❑ International arms control and compliance with non-proliferation;
- ❑ To minimize redirecting human and economic resources to armaments;



## Key International Standards *SALW*

- ❑ Recipient country should apply their right of individual or collective self-defense;
- ❑ Whether transfer will contribute to appropriate and proportional response to the military and security threats;
- ❑ Legitimate national security needs of the recipient country;
- ❑ Requirements of the recipient country to be able to participate in peacekeeping and other measures;



## Key International Standards *SALW (continued)*

- ❑ Threats to peace;
- ❑ Being or resold (or otherwise diverted) within the recipient country or re-exported under undesirable conditions;
- ❑ Safety procedures of the recipient country.



## **Key International Standards Review Criteria for Permits**

***The EU adopted a Joint Opinion on the 8 December 1998***

- ❑ There are eight criteria to be considered when reviewing license application:
  - Compliance with international obligations and commitments;
  - Human rights;
  - The internal situation in the recipient country, the existence of tensions or armed conflicts;
  - Preservation of regional peace, security and stability;
  - National security and the security of friendly and allied countries;



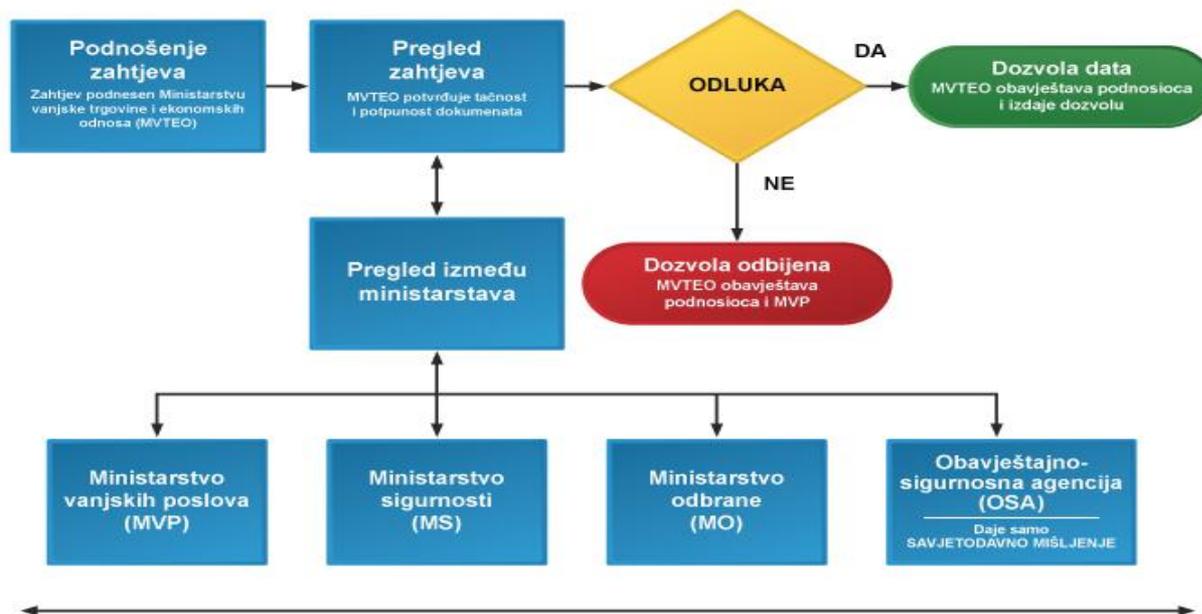
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**Key International Standards**  
***Review Criteria for Permits***  
***The EU adopted a Joint Opinion on the 8 December 1998***  
***(continued)***

- Customer attitude towards terrorism, organized crime and the nature of its alliances and respect for international law;
- The risk of redirecting within the buyer country or re-exporting under undesirable conditions;
- Compatibility of exports with the technical and economic capacity of the recipient country.

# Licensing for Military Products

Dijagram toka za izdavanje vojnih dozvola



Vremenski tok: Dozvola se izdaje ili odbija u roku od 60 dana od dana podnošenja potpunog zahtjeva;  
ili 90 dana ukoliko su potrebne dodatne informacije i/ili postoji neslaganje između ministarstava.



## Applications for Licenses *Application Procedures for Licenses*

- To be submitted at least 60 days before the intended course of action.
- To specify exact classification number of goods under the Military equipment and the corresponding tariff of the Customs Tariff.
- To provide documentation that clearly shows the sequence of activities of foreign trade.
- Brokers must submit documentation that the host State approved their activities.
- It is necessary that all the documents accompanying the application are in one of the official languages of BiH. Documents in a foreign language must be translated by a certified court interpreter. Original documents must also be submitted.
- The Ministry will allow up to 30 days during which the applicant may submit the missing data if the original application is incomplete.



## Decision-making Process *Licensing*

Licenses will be issued or rejected within 60 days from the submission a complete application, or within 90 days in case:

- Additional information is required  
and/or
- There is some disagreement between the agencies.



## Decision-making Process *Rejecting of License Application*

The Ministry will reject the license if:

- The necessary consent of the agencies whom the application was submitted for review was not obtained;
- The information contained in the application is false or incomplete;
- The applicant has violated the statutory provisions of the law on foreign trade;
- Goods do not correspond to those given in the application;
- The Ministry could not inspect the goods and documents on demand;
- The applicant has failed to complete an application and submit any missing or additional information requested within 30 days.

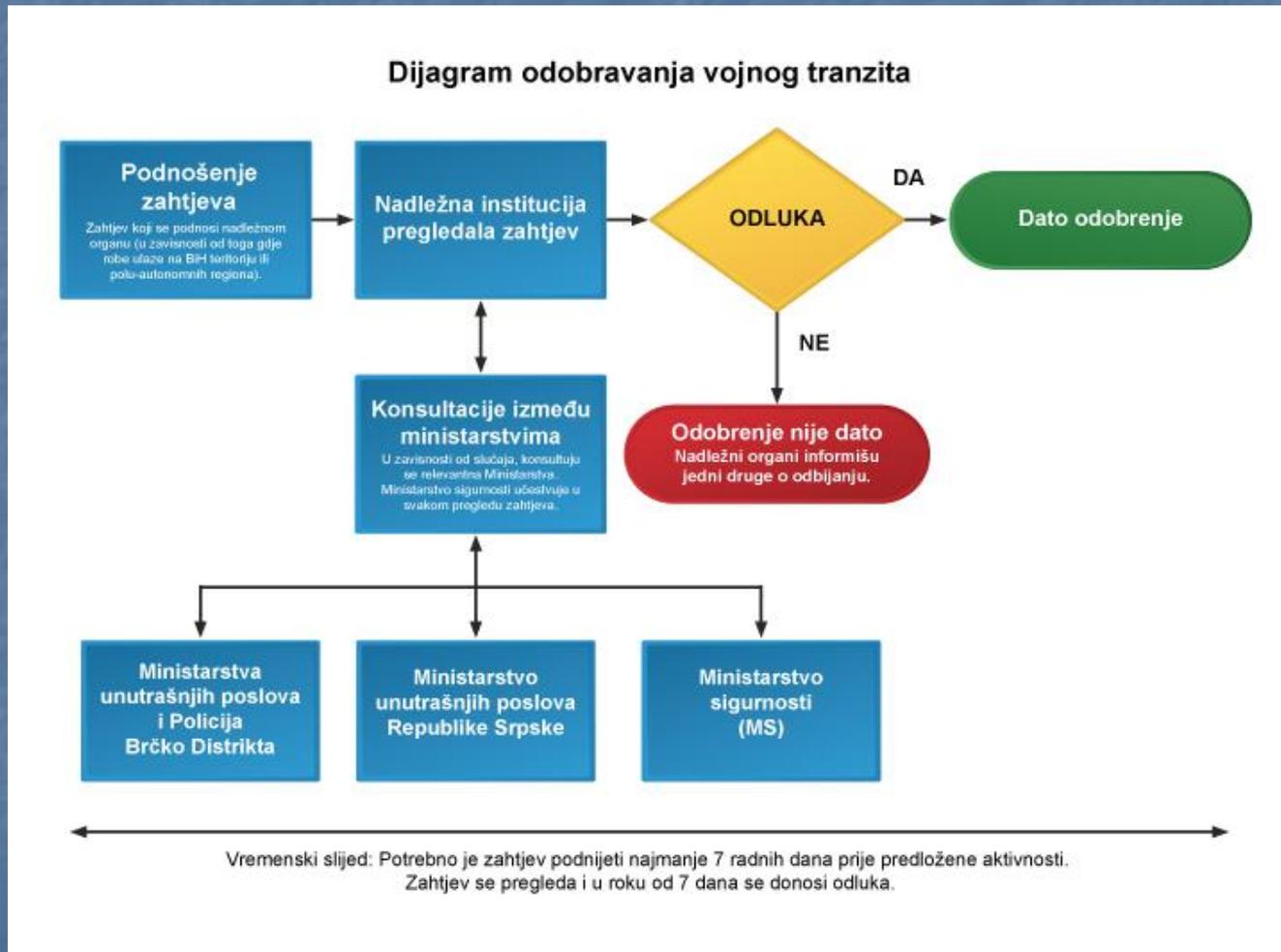


## Decision-making Process *Withdrawal (revoking) License*

The Ministry may withdraw a license if:

- The application contains false or incomplete information, while the applicant knew or should have known that the information was false or incomplete;
- Acquired new information that would lead to rejection of the original application;
- Issued document is not used for the intended purposes;
- Legal entity does not operate in accordance with the provisions of the law;
- Legal entity is obstructing the efforts to implement control.
- The Ministry is not responsible for the costs incurred or to be incurred by revocation of the license.

# Licensing for Transit





## Applications for Licenses

### *Licenses for Foreign Trade in Arms and Military Equipment*

- Individual licenses are issued by the MOFTER and are required for the import, export and brokering in arms and military equipment or services related to arms and military equipment.
- Licenses are valid for one year.



## Applications for Licenses *Requirements for License Application*

For applications is required a standard form with supporting documentation, to be submitted to the Ministry:

- Origin of the goods;
- Technical specifications of the goods (standards, technical specifications, etc.), in the case of chemical IUPAC chemical name and CAS number (if assigned) should also be stated;
- Contract or a certified copy of the contract, as well as the offer (price list);



## Applications for Licenses *Requirements for License Application* *(continued)*

- Statement by the end-user on the end-use, including all relevant information and specifications;
- The document on the end-user, confirmed by the competent institutions of the country of end-user, in the case of export;
- A document issued by the responsible authority, which approves i.e. states the purpose of import of goods from a common list of military equipment, in the case of import; and
- Proof of payment of administrative fees of 5.00 KM to apply and 15 KM for the license.



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**Thank you for your attention!**