

FSC.EMI/9/18
15 February 2018

ENGLISH only



Permanent Mission of Montenegro to the UN, OSCE and other International Organizations

No: 38 -1/2018

The Permanent Mission of Montenegro to the UN, OSCE and other International Organizations in Vienna presents its compliments to all OSCE Delegations and Permanent Missions to the OSCE and to the Conflict Prevention Centre and has the honour to enclose herewith the replay of Montenegro to the Questionnaire on Participating States' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology (Calendar Year 2017).

The Permanent Mission of Montenegro to the UN, OSCE and other International Organizations in Vienna avails itself of this opportunity to renew to the OSCE Missions and Delegations of the Participating States and the Conflict Prevention Centre the assurances of its highest consideration.



Vienna, 12 February 2018

**To: All Permanent Missions/Delegations to the OSCE
Conflict Prevention Centre
Vienna**



Montenegro

Ministry of Foreign Affairs

**Questionnaire on Participating States' Policy and/or
National Practices and Procedures for the Export of
Conventional Arms and Related Technology - 2017**

(Submitted: February 2018)

Organization for Security and Co-operation in Europe 29 November 1995
Forum for Security Co-operation

Original: ENGLISH

132nd Plenary Meeting
FSC Journal No. 136, Agenda item 3

DECISION No. 20/95

The Forum for Security Co-operation adopted a decision regarding the Questionnaire on Participating States' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology (Annex).

Questionnaire on Participating States' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology (Annex).

OSCE Participating States are requested to provide details of:

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

Export of conventional arms and related technology from Montenegro is possible only with the licence issued by the competent state body – Ministry of Economy.

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.

Export of conventional arms and related technology in Montenegro is regulated under the Law on Foreign Trade in Arms and Military Equipment (Official Gazette of Montenegro 40/2016). In accordance with the law mentioned above, the List of Arms and Military Equipment (Official Gazette of Montenegro 33/2017) was adopted requiring submission of export licence in export procedures.

Pursuant to Article 4 of the mentioned law, the Government of Montenegro, at the proposal of the Ministry competent for foreign trade matters, passes and updates the National Control List of Arms and Military Equipment for:

- harmonisation of national legislation with the legislation of the European Union;*
- enforcement of sanctions against particular countries, entities and persons or for the implementation of conventions in the field of arms control and control of technology transfer;*
- the interests of defence and security of Montenegro;*
- control of trade in goods which is or may be in their entirety used for development, production, handling, operation, maintenance or other servicing, stockpiling, storage, identification, testing or proliferation of chemical and biological arms, nuclear weapon or other nuclear warheads or for the purpose of development, production, maintenance or other servicing, testing, stockpiling or proliferation of missiles or other carriers for such arms.*

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

Any international agreements or guidelines, other than OSCE commitments, covering the export of conventional arms to which they are a party. Arms trade treaty (ATT), Convention on certain conventional weapons and additional protocols, Convention on prohibition of cluster munitions (CCM), Convention on prohibition of anti-personnel mines (APLMC), Firearms protocol, etc.

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

- Who is the issuing authority?

The issuing authority for export licence is the Ministry of Economy of Montenegro.

- What other authorities are involved and what is their function?

The licence is issued with prior consent obtained from the Ministry of Defence, Ministry of Foreign Affairs and European Integration and Ministry of Interior.

As needed, and depending on a type and purpose of the controlled goods, the Ministry of Economy acquires opinions from other competent bodies as well.

In the framework of its competences, the Ministry of Defence, Ministry of Foreign Affairs and European Integration and Ministry of Interior, when granting the approval of export in controlled goods, and the Ministry when making decision on licence issuance, strictly comply with the criteria set out in the Council Common Position 2008/944/CFSP of 08 December 2008 which is one of the core steps in upgrading legal system in the area of controlling foreign trade in controlled goods.

- Who deals with compliance?

The Ministry of Economy of Montenegro is a key link in the system of control and compliance of regulations in the area of foreign trade in arms, military equipment and dual-use goods.

5. List 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.

The List of Arms and Military Equipment which is subject to export licencing regime was established in Montenegro for the first time under the Law on Foreign Trade in Arms, Military Equipment and Dual-use Goods (Official Gazette of FRY 07/2005). That list was harmonised with the European regulations several times, and now the List of Arms and Military Equipment (Official Gazette of Montenegro 33/2017) was adopted and is harmonised with a valid piece of regulation governing foreign trade in conventional arms and military equipment, i.e. Law on Foreign Trade in Arms and Military Equipment (Official Gazette of Montenegro 40/2016) and as such it is harmonised with the European regulation CELEX 52013XG0406.

6. Principles and national regulations on the destination or end-user of the equipment. Is there a complete *erga omnes* system or published list of:

- destinations of concerns?

Export licence is issued with prior consent obtained from the Ministry of Defence, Ministry of Foreign Affairs and European Integration and Ministry of Interior. The consent is given by these ministries in accordance with the criteria set out in Article 22 of the Law on Foreign Trade in Arms and Military Equipment (Official Gazette of Montenegro 40/2016), i.e. Criteria listed in the Council Common Position 2008/944/CFSP. The matter mentioned above is just one of the criteria considered during consenting.

- embargoed countries?

The Ministry of Foreign Affairs and European Integration gives consent for the issuance of export licence upon evaluation of the criteria set out in Article 22 of the Law on Foreign Trade in Arms and Military Equipment (Official Gazette of Montenegro 40/2016) which are harmonised with the EU criteria for issuing licenses laid down in the Council Common Position 2008/944/CFSP. These criteria, *inter alia*, include: "international obligations of Montenegro and its commitment to enforce arms embargoes imposed by the United Nations, European Union and Organisation for Security and Co-operation in Europe."

- differentiation between destinations (e.g. is there any preferential treatment of (group of) countries)?

Identical procedures apply to all destinations of goods.

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

Procedures for export of conventional arms and related technology require, in accordance with Article 18 of the Law on Foreign Trade in Arms and Military Equipment (Official Gazette of Montenegro 40/2016), submission of the original End-user Certificate issued by the competent body in end-user's country or original International Import Certificate not older than 6 months. Identical procedures are conducted for re-export. The Ministry of Foreign Affairs and European Integration will verify End-user Certificate and/or International Import Certificate prior to giving consent for conducting a specific transaction.

In case of export of previously imported controlled goods, the Ministry of Economy may request from the applicant to submit, in addition to the licence application, an approval of changing end-user of goods issued by the country from which the goods are imported.

*Also, End-user Certificate (EUC and IIC) for import of controlled goods is issued by the Ministry of Economy at the request of importer (**Annex: prescribed EUC and IIC forms**). These documents and all the necessary forms can be found on the official website of the Ministry of Economy at: <http://www.mek.gov.me/biblioteka/obrasci?pagerIndex=2>.*

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

*The Law on Foreign Trade in Arms and Military Equipment (Official Gazette of Montenegro 40/2016) in Article 2 paragraph 2 lays down that "**transit** shall include transportation of controlled goods by land, water or air, through the customs territory of Montenegro into the territory of another country, with and without transshipment" Transshipment procedures in transit of the goods concerned are regulated under the Customs Law of Montenegro (Official Gazette of the Republic of Montenegro 07/02 from 12.02.2002, 38/02 from 26.07.2002, 72/02 from 31.12.2002, 21/03 from 31.03.2003, 31/03 from 21.05.2003, 29/05 from 09.05.2005, 66/06 from 03.11.2006, 21/08 from 27.03.2008, 39/11 from 04.08.2011, 40/11 from 08.08.2011, 28/12 from*

05.06.2012, 62/13 from 31.12.2013). Also, provisions of the Law on Free Zones (Official Gazette of Montenegro 42/2004 i 40/2016) regulate handling of goods in 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?

Conventional arms and related technology can be exported by a person (legal) registered with the Ministry of Economy for conducting foreign trade in these goods. Only upon registration (obtaining a decision for the conduct of activity) can foreign trade in controlled goods be conducted by a person who has licence to conduct foreign trade in controlled goods which is issued in accordance with the law mentioned above.

The natural person who conducts foreign trade in controlled goods for personal use shall not be entered in the Register.

Legal entity or entrepreneur which conducts non-commercial export and import shall not be entered in the Register.

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

The Law on Foreign Trade in Arms and Military Equipment (Official Gazette of Montenegro 40/2016) in Article 29 lays down in detail the conditions for annulment of issued licences.

The Ministry shall revoke the licence if:

- 1) new circumstances or evidence are found, which would constitute a reason to reject the application by themselves or in conjunction with evidence presented;*
- 2) it is found that the criteria referred to in Articles 22 and 24 hereof have been breached;*
- 3) it is found that the licence was issued on the basis of incomplete or inaccurate data;*
- 4) the licence holder does not comply with the conditions specified in the licence;*
- 5) the licence holder has been deleted from the Register;*
- 6) the licence holder has transferred the licence to another person in contravention of Article 26 paragraph 4 of this Law.*

The Ministry may revoke, suspend or modify the licence, if it finds out, on the basis of its own information or information obtained from the competent authorities, that it is necessary to carry out additional checks of data from the licence.

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 Law on Foreign Trade in Arms and Military Equipment (Official Gazette of Montenegro 40/2016) in Article 40 sets out detailed penal provisions in case of acting contrary to the provisions set out by the law mentioned above.

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

In all the procedures for export of conventional arms and related technology it is necessary to submit export licence issued by the competent state body - Ministry of Economy.

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.

In all the procedures for temporary export of conventional arms and related technology it is necessary to submit export licence issued by the competent state body - Ministry of Economy. Also, in the export procedure and return of temporarily exported goods it is necessary to submit import licence issued by the competent body - Ministry of Economy.

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

In addition to the application, a person who is import licence applicant also submits documents listed in Article 18 of the Law on Foreign Trade in Arms and Military Equipment (Official Gazette of Montenegro 40/2016).

The form and licence template can be found on the official website of the Ministry of Economy at <http://www.mek.gov.me/biblioteka/obrasci?pagerIndex=2>.

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

Under the Law on Foreign Trade in Arms and Military Equipment (Official Gazette of Montenegro 40/2016) it is possible to obtain licence for one single transaction (number of deliveries is not limited). This law does not regulate what is known as global and/or general licences.

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

After submission of the prescribed documents, the procedure is conducted for obtaining necessary approvals needed for licence issuance for all persons registered with the Ministry of Economy for the conduct of subject activity. Licence may be issued only after the above requirements have been fulfilled. In this regard, exporters are given advice on valid legislation and procedures that must be conducted in order to carry out a particular transaction.

Before the start of a foreign trade transaction, persons conducting trade are obligated to determine whether the goods in question fall under the category of controlled goods in accordance with this Law.

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

The average number of export licences for controlled goods (arms and military equipment, dual-use goods, small arms and light weapons) is around 90, while the number of staff carrying out the activities mentioned above is six.

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

The Law on Foreign Trade in Arms and Military Equipment (Official Gazette of Montenegro 40/2016) in Article 36 lays down that the Ministry shall submit to the Government an annual report for the previous year on issued licences for foreign trade in controlled goods.

The Ministry shall publish the report referred to in paragraph 1 of this Article on its website, except for the data considered classified, in accordance with the law.

It publishes the report mentioned above on its website, except for the information that is considered confidential and protected in accordance with the law.

In addition to the Law on Foreign Trade in Arms and Military Equipment and Law on the Control of Export of Dual-use Goods, other laws are also implemented in the framework of valid legislation in Montenegro in the area of foreign trade in controlled goods and these inherently regulate certain matters that are important for and that have impact on foreign trade in controlled goods.¹

After declaration of independence on 03 June 2006, Montenegro assumed in its succession statement the agreements that were compliant with its legal system and became active participant in implementation of the majority of important international agreements and conventions in the area of disarmament and arms control.

Montenegro is consistently committed to the implementation of all international legal instruments governing disarmament and arms control and it also supports all new constructive initiatives aimed at strengthening and expanding international cooperation in the interest of reducing and eliminating the risk and consequences of production and use of any type of arms or ordnance.

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

The Law on Foreign Trade in Arms and Military Equipment and Law on the Control of Export of Dual-use Goods regulates conditions for conducting foreign trade in arms, military equipment and dual-use goods (and therefore conventional arms as well), as well as the provision of services related to controlled goods, conditions and procedure for licence issuance, competence of bodies, monitoring implementation of this law and other matters relevant for foreign trade in controlled goods.

¹ *Law on Production and Trade in Arms and Military Equipment (Official Gazette of FRY 41/96 and Official Gazette of FRY 07/05); Law on Foreign Trade (Official Gazette of Montenegro 28/04, 37/07); Customs Law (Official Gazette of RMNE 07/02, 38/02, 72/02, 21/03, 31/03, 29/05, 66/06 and Official Gazette of MNE 21/08); Law on Border Control (Official Gazette of MNE 72/09).*

Besides these, the following are also applied: Law on Chemical Substances (Official Gazette of MNE 18/12); Law on Protection against Ionizing Radiation and Radiation Safety (Official Gazette of MNE 56/09); Law on the Control of Production and Trade in Substances that may be used in Production of Narcotic Drugs and Psychotropic Substances (Official Gazette of MNE 83/09).

NB: *Participating States that do not export conventional arms and related technology will inform all other Participating States.*