**ACT**

**ON THE CONTROL OF DUAL-USE ITEMS**

1. GENERAL PROVISIONS

*Purpose of the Act*

Article 1

This Act sets out terms and conditions relating to the control of dual-use items insofar as it is not regulated by the EU rules or the Member States are authorised to further regulate this field in their national legislations. The terms and conditions relating to the control of dual-use items refer to the export of dual-use items, their transfer within the EU customs territory, their transit and brokering, the provision of technical assistance in relation to dual-use items, and the issuance of import certificates, end-use certificates and delivery verification certificates for dual-use items.

*Implementation of EU rules*

Article 2

(1) This Act designates the competent authorities responsible for the issuance of licences and application of control arrangements, and it lays down penal provisions relevant for the implementation of Council Regulation (EC) No. 428/2009, of 5 May 2009, setting up a Community regime for the control of export, transfer, brokering and transit of dual-use items (OJ L 134, 29 May 2009, p. 1, with amendments) (hereinafter: Regulation 428/2009/EC).

(2) This Act designates the competent authorities responsible for the issuance of licences and application of control arrangements, and it lays down penal provisions relevant for the implementation of the Council Joint Action of 22 June 2000 concerning the control of technical assistance related to certain military end-uses (OJ L 159, 30 June 2007, p. 216).

*Definitions*

Article 3

(1) Technical assistance shall mean any technical support related to repairs, development, manufacture, assembly, testing, maintenance or any other technical service, which may take forms such as instruction, training, transmission of working knowledge or skills or consulting services. Technical assistance shall include oral forms of assistance.

(2) Other terms used in this Act shall have meanings as defined in Council Regulation (EC) No. 428/2009.

1. LICENCE FOR BROKERING SERVICES, TECHNICAL ASSISTANCE AND EXPORT LICENCE, AND THE COMPETENT AUTHORITY FOR ISSUING LICENCES

*Licence for the Provision of Brokering Services*

Article 4

(1) Pursuant to Article 5(1) of Regulation 428/2009/EC, a licence shall be required for the provision of brokering services of dual-use items.

(2) A licence shall be required for brokering services of dual-use items not listed in Annex I of Regulation 428/2009/EC if the broker has been informed by the Ministry of the Economy, Labour and Entrepreneurship (hereinafter: the Ministry) that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in Article 4(1)(2) of Regulation 428/2009/EC.

(3) If a broker is aware, or has grounds for suspecting, that items not listed in Annex I of Regulation 428/2009/EC, for which he proposes brokering services, are intended, in their entirety or in part, for any of the uses referred to in Article 4(1)(2) of Regulation 428/2009/EC, he must notify the Ministry, which will decide whether or not to make the brokering services concerned subject to licence. The brokering service may be provided only after the Ministry has authorised such a service or decided that no licence is required.

*Licence for the Provision of Technical Assistance*

Article 5

(1) A licence shall be required for technical assistance provided outside the territory of the European Union by legal persons, sole traders with registered seat or place of residence in the territory of the Republic of Croatia, or other natural persons with place of residence in the Republic of Croatia, if they have been informed by the Ministry that the technical assistance is intended for:

- the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons.

- military end-use in countries that are subject to an arms embargo as defined under Article 4(2) of Regulation 428/2009/EC.

(2) If a legal person or sole trader or other natural person is aware, or has grounds for suspecting, that the technical assistance they plan to provide is intended for any of the uses referred to in paragraph 1 herein, they are obliged to notify the Ministry, which will decide whether or not to make the technical assistance concerned subject to licence. The technical assistance may be provided only after the Ministry has authorised such technical assistance or decided that no licence is required.

(3) No licence shall be required for the provision of technical assistance as referred to in paragraphs 1 and 2 herein:

- when the technical assistance is provided in a country listed in Annex II, Part 3, of Regulation 428/2009/EC;

- when it appears in oral form and does not pertain to products controlled by one or more international regimes, groups of states or agreements.

Article 6

(1) A licence shall be required for technical assistance provided within the customs territory of the Republic of Croatia by legal persons, sole traders with registered seat or place of residence in the territory of the Republic of Croatia or other natural persons with place of residence in the Republic of Croatia, in oral or written form, by fax, telephone or electronic media, if they have been informed by the Ministry that the technical assistance is intended for any of the uses referred to in Article 4(1)(2) of Regulation 428/2009/EC, and if it is delivered to persons residing in third countries, except for the countries listed in Annex II, Part 3 of Regulation 428/2009/EC.

(2) If a legal person, sole trader or other natural person is aware, or has grounds for suspecting, that the technical assistance they plan to provide in oral or written form, by fax, telephone or electronic media, is intended for any of the uses referred to in paragraph 1 herein, they must notify the Ministry, which will decide whether or not to make the technical assistance concerned subject to licence. The technical assistance may be provided only after the Ministry has authorised such technical assistance or decided that no licence is required.

Article 7

No licence shall be required for the provision of technical assistance as referred to in Articles 5 and 6 herein when it takes the form of transmitting information that is “in the public domain” or transmitting information from “basic scientific research”, as these terms are defined in Annex I, Part 1 of Regulation 428/2009/EC.

Article 8

If an exporter has grounds for suspecting that dual-use items not listed in Annex I of Regulation 428/2009/EC are or may be intended, in their entirety or in part, for any of the uses referred to in Article 4(1) of Regulation 428/2009/EC, he must notify the Ministry, which will decide whether or not to make the export concerned subject to licence. The dual-use items may be exported only after the Ministry has granted an export licence or decided that no licence is required.

*Competent Authority for Issuing Licences*

Article 9

Licences for

a) export of dual-use items under Article 3 and Article 4(1)(2)(3)(4) of Regulation 428/2009/EC,

b) export of dual-use items under Article 7 of this Act and Article 4(5) of Regulation 428/2009/EC,

c) provision of brokering services for dual-use items under Article 4 of this Act and Article 5 of Regulation 428/2009/EC,

d) transfer of dual-use items within the customs territory of the European Union under Article 22(1) of Regulation 428/2009/EC

e) provision of technical assistance under Articles 5 and 6 of this Act,

shall be issued by the Ministry on the basis of proposals from the Commission referred to in Article 12 of this Act.

*Transit*

Article 10

(1) The Ministry may decide to prohibit transit as referred to in Article 6(1) of Regulation 428/2009/EC, on the basis of a proposal from the Commission referred to in Article 12 of this Act.

(2) In special cases, before deciding to prohibit transit under paragraph 1 herein, the Ministry may impose licence requirements for the specific transit of dual-use items and specify conditions for such a licence.

(3) The Ministry may decide to prohibit transit of dual-use items not listed in Annex I of Regulation 428/2009/EC, if the items are or may be intended, in their entirety or in part, for any of the uses referred to in Article 4(1)(2) of Regulation 428/2009/EC.

(4) The Customs Administration of the Ministry of Finance of the Republic of Croatia (hereinafter: Customs Administration) shall be notified by the Ministry without delay of any such prohibition of transit or application for a licence for specific transit of dual-use items.

Article 11

(1) Applications for export licences, transfer licences, licences for the provision of brokering services and technical assistance, and licences for specific transit of dual-use items shall be submitted to the Ministry.

(2) The form and content of the application form for export licences, transfer licences, licences for the provision of brokering services and technical assistance, the list of supporting documents accompanying the application, the requirements for licence of special transit of dual-use items as referred to in Article 10(2) of this Act and the requirements for a global licence as referred to in Article 13(2) of this Act, shall be prescribed by the minister in charge of the economy (hereinafter: the Minister).

1. ROLES, POWERS AND RESPONSIBILITIES OF GOVERNMENT BODIES IN THE ENFORCEMENT OF THIS ACT

*Commission for the Control of Dual-Use Items*

Article 12

(1) The Ministry shall issue export licences, transfer licences, licences for the provision of brokering services and technical assistance, and licences for specific transit of dual-use items on the basis of proposals made by the Commission.

(2) The Commission shall be appointed by the Minister, and it shall include representatives of the ministries responsible for foreign affairs, internal affairs, defence, customs and the economy, and representatives of other authorities, depending on the end-user and the type of goods concerned. The Commission shall be appointed and dissolved by the Minister on the basis of proposals made by relevant ministers or director-generals.

(3) Along with the proposals referred to in paragraph 1 herein, the Commission shall provide to the Ministry its expert opinion concerning the appropriate classification of dual-use items, exchange information relevant for the control of dual-use items, and participate in the control of dual-use items, in line with Article 21(3) of this Act.

(4) The technical and administrative tasks required by the Commission shall be secured by the Ministry.

(5) The Rules of Procedure of the Commission shall be adopted by the Minister, and they shall stipulate the method of operation and the decision-making process of the Commission.

*Licences*

Article 13

(1) The Ministry shall issue individual export licences, transfer licences, licences for the provision of brokering services and technical assistance, and licences for specific transit.

(2) By way of exception to paragraph 1 of this Article, the Ministry may issue to the exporter a global export licence, taking into consideration the type of dual-use items, the type and duration of export business, the country to which such items are exported and the existence of an internal compliance programme within the company, specifying procedures and responsibilities within the company, aimed at ensuring compliance with the provisions and objectives of Regulation 428/2009/EC, this Act and subordinate legislation adopted on the basis of this Act. The basic mandatory elements of such an internal compliance programme will be laid down in an ordinance issued by the Minister.

(3) Upon a proposal from the Commission referred to in Article 12 herein, the Ministry may require the exporter, broker or provider of technical assistance to supply evidence of its internal compliance programme, when deciding on a licence for export of dual-use items listed in Annex IV of Regulation 428/2009/EC or provision of brokering services and technical assistance in connection with those items.

(4) The Ministry may issue national general export licence for specific exports in line with Article 9(4) of Regulation 428/2009/EC.

(5) Upon a proposal from the Commission, the Ministry may restrict or prohibit the use of the Union General Export Licence in line with Council regulations setting up a Union regime for the control of export, transfer, brokering and transit of dual-use items.

(6) The licence referred to in paragraph 1 of this Article shall be issued with a validity period of up to one year, and the licence referred to in paragraph 2 of this Article shall be issued with a validity period of up to two years.

Article 14

The Ministry shall decide on the application for a licence within a period of 30 days from the day of submission of an orderly application, or within a period of 60 days, if the issuance procedure requires additional verification.

Article 15

(1) The Ministry shall refuse to grant a licence if it establishes that the export of dual-use items, the provision of brokering services and technical assistance is in contravention of Article 12 of the Regulation 428/2009/EC.

(2) The Ministry shall refuse to grant a licence if the items do not correspond to the description contained in the application, and the exporter, manufacturer or service provider refuses to allow an inspection, upon request of the Ministry, of the items or documents relating to the items.

*Dual-Use Items Certificate*

Article 16

(1) If the country exporting dual-use items requires an International Import Certificate (IIC), an End-Use Certificate (EUC) or a Delivery Verification Certificate (DVC) issued by the competent authority of the Republic of Croatia, such certificate for dual-use items shall be issued by the Ministry.

(2) The form and content of the application form for an International Import Certificate, an End-Use Certificate or a Delivery Verification Certificate for dual-use items, and the required supporting documentation, shall be prescribed by the Minister.

(3) The provisions of paragraph 1 of this Article shall also apply to the transfer of dual-use items within the EU customs territory.

*Revocation of Licence*

Article 17

(1) The Ministry may issue a decision on the revocation or suspension of an issued licence if it has established that:

a) one or more conditions under which the licence was issued is no longer fulfilled or has changed,

b) the exporter or service provider do not conduct their activities in accordance with the licence or the internal compliance programme on the basis of which the licence was issued.

(2) The Ministry may issue a decision on the revocation of an issued licence at the request of the exporter or service provider.

(3) The Ministry may annul an issued licence if it establishes that the licence was issued on the basis of incorrect or incomplete data, and that the applicant was aware, or should have been aware, of the incorrectness and incompleteness of the data.

(4) The Republic of Croatia shall not be liable for any costs that have been or will be incurred by activities undertaken in line with this Article.

(5) The decisions adopted pursuant to Articles 14 and 15 of this Act and paragraphs 1, 2 and 3 of this Article are not subject to appeal, but are subject to an action before the Administrative Court.

*Control Measures*

Article 18

(1) Exporters of dual-use items, brokers and technical-assistance providers shall keep registers or records in line with Article 20(1)(2) of Regulation 428/2009, in respect of those services for which a licence is required pursuant to Articles 5 and 6 hereof.

(2) The commercial documents relating to the transfer of dual-use items within the EU customs territory shall be drawn up in line with Article 22(10) of Regulation 428/2009/EC.

(3) The documents referred to in paragraph 1 herein shall be kept by the exporter, broker or provider of technical assistance for at least five years from the end of the calendar year in which the export or transfer of dual-use items took place or the brokering services or technical assistance were provided.

(4) The Minister may prescribe that other types of data should also be contained in the documents referred to in paragraph 3 herein.

Article 19

(1) The exporter, broker or provider of technical assistance shall notify the Ministry of the export, or the services provided, within fifteen days from the day of the export of dual-use items or the provision of services, with a copy of the relevant licence and, in the case of export, with a copy of the single administrative document (customs declaration) attached to the notification.

(2) The exporter or broker or technical-assistance provider shall notify the Ministry in writing of any change relating to business partners, end-users, intended end-use and similar that takes place after the licence has been issued, within five days from the date of such change or from the date when it was brought to their attention.

(3) On the basis of the received written notification referred to in paragraph 2 hereof, the Ministry shall decide whether the licence is valid, or it shall adopt a decision in line with Article 17(1) herein.

(4) The licence may only be used after the Ministry has informed the exporter or the broker or technical-assistance provider about the subsequent procedure.

Article 20

(1) The Ministry shall keep a register of issued licences and a register of activities performed in line with this Act, and it shall collect and process data relating to the export, transit and transfer of dual-use items, and the provision of services for dual-use items.

(2) For the purpose of performance of the tasks laid down in this Act and the activities laid down in Regulation 428/2009/EC, the Ministry shall participate in the work of the institutions of the European Union and cooperate with the Member States of the European Union, competent authorities in other states, international organisations and regimes, and it shall provide them with relevant data, in accordance with the international commitments of the Republic of Croatia.

*Supervision*

Article 21

(1) The supervision of the export of dual-use items and assessment of conformity of the items with the export licences, transfer of dual-use items within the EU customs territory, provision of brokering services and technical assistance, and transit of dual-use items shall be implemented by the Customs Administration. The Customs Administration shall report its findings to the Ministry every six months in writing.

(2) During the procedure of issuing a licence, and after such licence has been issued, the Customs Administration, at the request of the Ministry, and the Ministry itself, may inspect the dual-use items and relevant documents at the exporter’s or manufacturer’s premises.

(3) During the inspection of dual-use items, the Ministry may request expert assistance of ministries and other bodies participating in the work of the Commission referred to in Article 12 of this Act, in order to assess the conformity of the items with the data stated in the application.

(4) The ministries and other bodies referred to in Article 12 herein shall be entitled and obliged to exchange information on exporters and exported dual-use items, necessary for the supervision as stipulated in this Act.

(5) The exporter, bank or any other financial institution or any other entity in possession of the data necessary for the control of dual-use items shall, at the request of the Ministry, customs authorities or law-enforcement authorities, provide their business records, data on business correspondence and all other data for the control of dual-use items necessary for the supervision.

(6) The provisions of paragraph 5 herein, which apply to exporters, shall also apply to suppliers of dual-use items within the customs territory of the European Union, brokers, transit service providers and providers of technical assistance.

(7) Exporters, manufacturers, brokers and providers of technical assistance shall allow access to their premises to persons referred to in paragraphs 1, 2 and 3 herein.

(8) If the Customs Administration, during the implementation of the supervision referred to in paragraph 1 herein, establishes that provisions of this Act have been breached, it shall issue a decision ordering the irregularities to be rectified within a specified time period.

(9) Against the decision adopted pursuant to paragraph 8 herein, an appeal may be lodged within 15 days from the date of its receipt, addressed to the Independent Service for Second Instance Administrative Procedure of the Ministry of Finance.

IV. PENAL PROVISIONS

*Misdemeanour Offences*

Article 22

(1) A legal person or sole trader shall be punished, for a misdemeanour offence, with a fine in the amount of not more than 250% of the value of the export, but not less than HRK 50,000, if such person:

a) exports dual-use items (Article 3(1) of Regulation 428/2009/EC), transfers dual-use items within the customs territory of the European Union (Article 22 of Regulation 428/2009/EC), provides brokering services (Article 5(1) of Regulation 428/2009/EC and Article 4 of this Act) or technical assistance (Article 5(1)(2) and Article 6(1)(2) of this Act) without a licence;

b) fails to notify the Ministry that the goods concerned are dual-use items (Article 4(4) of Regulation 428/2009/EC, Article 8 of this Act);

c) fails to notify the Ministry of a change that took place after the licence was issued (Article 19(2) of this Act);

d) engages in the transit of dual-use items after the Ministry has prohibited the transit (Article 6(1) of the Regulation 428/2009/EC, Article 10(1) of this Act).

(2) A fine in the amount of 50% of the value of the export, but not less than HRK 10,000, shall also be imposed on the responsible person within the legal person for misdemeanour offences as referred to in paragraph 1 herein.

(3) A fine in an amount between HRK 5,000 and HRK 10,000 shall be imposed on any other natural person for misdemeanour offences as referred to in paragraph 1 herein.

(4) In addition to the fine, a protective measure prohibiting the performance of activities related to the export of dual-use items for a duration of between six months and one year may also be imposed for a misdemeanour offence as referred to in paragraph 1, subparagraph 1 herein.

Article 23

(1) A legal person or sole trader shall be punished with a fine in the amount of HRK 50,000 to HRK 100,000 if such person:

a) acts in contravention to an issued certificate for dual-use items (Article 16(1) of this Act);

b) acts in contravention to the provisions of Article 18 of this Act;

c) fails to notify the Ministry, or fails to notify it in due time, of the performed export of dual-use items or the service provided (Article 19(1) of this Act).

(2) A fine in an amount between HRK 5,000 and HRK 10,000 shall also be imposed on the responsible person within the legal person for misdemeanour offences referred to in paragraph 1 herein.

(3) A fine in an amount between HRK 1,000 and HRK 5,000 shall be imposed on any other natural person for a misdemeanour offence referred to in paragraph 1.

*Criminal Offences*

Article 24

(1) Whoever exports dual-use items without an export licence (Article 3(1) of the Regulation 428/2009/EC), provides brokering services (Article 5(1) of Regulation 428/2009/EC and Article 4 of this Act), provides technical assistance (Articles 5(1)(2) and 6(1)(2) of this Act) without a licence, fails to notify the Ministry that the exported goods are dual-use items (Article 4(4) of Regulation 428/2009/EC, Article 8 of this Act) or fails to notify the Ministry of a change in the intended end-use of the dual-use items which takes place after the licence has been issued (Article 19(2) of this Act), to an extent that may jeopardize

a) the fulfilment of the international commitments of the Republic of Croatia, particularly in respect of international sanctions,

b) the interests of the Republic of Croatia in relation to foreign policy, security or defence,

shall be punished with imprisonment for a period of six months to five years.

(2) If the criminal offence referred to in paragraph 1 herein caused the death of several persons or substantial material damage, the perpetrator shall be punished with imprisonment for a period of at least five years.

IV. TRANSITIONAL AND FINAL PROVISIONS

Article 25

Licences for the export of dual-use items and import certificates for the import of dual-use items issued pursuant to the Act on the Export of Dual-Use Items (as published in the Official Gazette *Narodne novine* Nos. 100/04 and 84/08) may be used within the time periods set out in the above-referenced legislation.

Article 26

(1) The regulations referred to in Article 11(2), Article 13(2) and Article 16(2) of this Act shall be adopted by the Minister within three months of the day of entry into force of this Act.

(2) The Rules of Procedure referred to in Article 12(5) of this Act shall be adopted by the Minister within three months of the day of entry into force of this Act.

Article 27

The following regulations shall remain in effect until the regulations referred to in Article 26(1) of this Act have been adopted:

- Ordinance on the Application Form for the Issuance of an Export Licence for Dual-Use Items and the Provision of Brokering Services and Technical Assistance (Official Gazette *Narodne novine* No. 34/10)

- Ordinance on the Application Form for the Issuance of an Import Certificate for Dual-Use Items (Official Gazette *Narodne novine* Nos.166/04 and 123/07).

Article 28

As of the date of entry into force of this Act, the Act on the Export of Dual-Use Items (as published in the Official Gazette *Narodne novine* Nos. 100/04 and 84/08) shall be rendered null and void.

Article 29

This Act shall be published in the Official Gazette *Narodne novine* and shall enter into force on the day of accession of the Republic of Croatia to the European Union.