Pursuant to Article 95, item 3 of the Constitution of Montenegro I hereby pass the

DECREE PROMULGATING THE LAW ON CONTROL
OF EXPORT OF DUAL-USE ITEMS

I hereby promulgate the Law on Control of Export of Dual-Use Items, adopted by the 24th Assembly of the Parliament of Montenegro at the fourth sitting of the first regular (spring) session in 2012, on 29 May 2012.

No: 01-678/2

Podgorica, 4 June 2012

The President of Montenegro

Filip Vujanovic, m.p.

Pursuant to Article 82 paragraph 1 item 2 and Article 91 paragraph 2 of the Constitution of Montenegro, the Parliament of Montenegro of the 24th assembly, at the fourth sitting of the first regular (spring) session in 2012, on 29 May 2012 adopted the

LAW ON CONTROL OF EXPORT OF DUAL-USE ITEMS

I. GENERAL PROVISIONS

Subject of the Law

Article 1

This Law regulates terms and conditions for the export and transit of dual-use items, provision of brokering services and technical assistance in relation to dual-use items, the competencies of the state authorities in relation to the implementation of this Law, as well as other issues of importance for export and transit of dual-use items.

Obligations of the authorities competent for implementation of this Law

Article 2

Export control of dual-use items the competent authorities, in the implementation of this Law, shall conduct in accordance with foreign policy, security, defence and economic interests of Montenegro and its international obligations.
Due implementation of regulations

Article 3

For procedures conducted in accordance with this Law, the provisions of the law regulating general administrative procedure are to be applied, unless otherwise provided by this Law.

Use of gender-sensitive language

Article 4

Expressions used in this law referring to a natural person in masculine, consider the same expressions in feminine.

Meaning of terms

Article 5

Some of the terms used in this Law shall have the following meaning:

1) **Dual-use items** shall mean items, including software and technology which can be used for both civil and military purposes, and shall include all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices;

2) **Export of dual-use items** shall mean leaving or sending domestic goods from the customs territory of Montenegro, in accordance with customs regulations, including transmission and making available software and technology by electronic media, fax or telephone or oral transmission of technology by telephone where the technology is contained in a document the relevant part of which is read out over the telephone, or is described over the telephone in such a way to achieve substantially the same result;

3) **transit** shall mean transport of dual-use items over the customs territory of Montenegro (with and without transhipment) without making them available in Montenegro, in accordance with customs regulations.

4) **a person** shall mean any natural or legal person that has residence or is established on the territory of Montenegro;

5) **Exporter** shall mean any person that has residence or is established on the territory of Montenegro:
   - on whose behalf an export declaration is made, that is to say the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of Montenegro;
   - which transmits software or technology by electronic media including by fax, telephone, electronic mail or by any other electronic means out of the customs territory of Montenegro.

6) **Brokering services** shall mean the negotiation or arrangement of transactions for the purchase, sale or supply of dual-use items from a third country to any other third country, selling or buying of dual-use items that are located in a third country for their transfer to another third country, excluding services related to transportation, financial services, insurance or re-insurance, or general advertising or promotion activities;
7) **broker** shall mean a person providing brokering services from the territory of Montenegro as well as a person providing brokering services outside the territory of Montenegro;

8) **technical assistance** shall mean any support related to development, manufacture, assembly, testing, repairs or maintenance of dual-use items, or any other technical assistance which may take form of instruction, training, transmission of working knowledge or skills or consulting services, including all forms of oral assistance in respect to dual use items,

9) **military end-use** shall mean incorporation of parts or components into military items, use of production-, test-, or analytical equipment and components thereof, for development, production or maintenance of military items, as well as use of any unfinished products in a plant for the production of military items listed in the National Weapons and Military Equipment List pursuant to the law.

II. REQUIREMENTS RELATED TO EXPORT, TRANSIT, PROVISION OF BROKERING SERVICES AND TECHNICAL ASSISTANCE

The authority competent for adoption of National Control List

**Article 6**

The Government of Montenegro (hereinafter referred to as the ''Government'') shall, upon the proposal of the state authority in charge of foreign trade affairs adopt and update the National Dual-use Items Control List, harmonised with European Union Common List of Dual –Use Items.

**License**

**Article 7**

The state authority in charge of foreign trade affairs (hereinafter referred to as the ''Ministry'') shall issue license for export of dual use items, license for provision of brokering services and license for provision of technical assistance.

The license shall be issued for every single export of dual use items, and for every single brokering service or for technical assistance.

Notwithstanding the paragraph 2 of this Article, the Ministry may issue a single license for multiple exports of dual use items or for several brokering services or multiple technical assistance, taking into account type of dual-use items, type and duration of export activities, country to which items are to be exported or to which brokering services are to be provided or technical assistance is to be provided, as well as the end user of the dual use items.

Form and content of license, referred to in paragraphs 1 and 3 of this Article, shall be prescribed by the Ministry.
Export of dual-use items

Article 8

Export of dual-use items listed in the National Control List of Dual Use Items (hereinafter referred to as the "List") shall only be done with the license.

Comprehensive clause (Catch-all)

Article 9

The license shall be required for the export of non-listed dual-use items, if:

1) the exporter has been informed by the Ministry that the items are or may be intended, in their entirety or in part, for use in connection with development, production, handling, operation, storage, detection, identification or proliferation 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;
2) the purchasing country or a country of destination is under arms embargo, in accordance with the decisions adopted by the European Union, or the decision of the Organization for Security and Cooperation in Europe (OSCE) or arms embargo imposed by the binding resolution of the United Nations Security Council or if the exporter has been informed by the Ministry that the items in question are or may be intended, in their entirety or in part, for a military end-use;
3) the exporter has been informed by the Ministry that the items in question, to be exported from the territory of Montenegro, are or may be intended, in their entirety or in part, for use as parts or components of military items listed in the National Weapons and Military Equipment Control List.

If exporter knows or should know that dual-use items intended for export are not included in the List, and are or may be intended, in their entirety or in part, for any of the purposes referred to in paragraph 1 of this Article, he must notify the Ministry thereof.

With reference to paragraph 1 and 2 of this Article the Ministry, when applicable, shall notify other countries and the Commission of the European Union.

Provision of brokering services

Article 10

The license shall be required for brokering services of dual-use items included in the List, if:

- the broker has been informed by the competent authorities of Montenegro 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 9 paragraph 1 item 1 of this Law.

- the broker knew or should have known that the items included in the List, are or may be intended, in their entirety or in part, for any of the uses referred to in Article 9 paragraph 1 item 1 of this Law

The license shall be required for brokering services of the non-listed items, if:
- the broker has been informed by competent authorities of Montenegro that items are or may be intended, in their entirety or in part, for any of the uses referred to in Article 9 paragraph 1 items 1 and 2 of this Law;

- the broker knew or should have known that the items are or may be intended, in their entirety or in part, for any of the uses referred to in Article 9 paragraph 1 item 1 of this Law;

With reference to paragraph 1 item 2 and paragraph 2 item 2 of this Article broker shall notify the Ministry thereof.

**Provision of Technical Assistance outside the territory of Montenegro**

**Article 11**

The license shall be required for technical assistance provided outside the territory of Montenegro, if:

- a person has been informed by the Ministry that technical assistance is intended for the uses referred to in Article 9 paragraph 1 of this Law;

- a person knew or should have known that the technical assistance, to be provided, is or may be intended, in their entirety or in part, for any of the uses referred to in Article 9 paragraph 1 item 1 of this Law;

With reference to paragraph 1 item 2 of this Article a person shall notify the Ministry thereof.

Notwithstanding the paragraph 1 of this Article, technical assistance may be provided without license, if provided:

- to the European Union Member States, Australia, Canada, Japan, New Zealand, Norway, Switzerland, the United States of America;

- in oral form and not in connection with listed dual use items.

**Provision of Technical Assistance on the territory of Montenegro**

**Article 12**

The license shall be required for technical assistance provided on the territory of Montenegro, if a person intends to provide technical assistance related to items which are or may be intended, in their entirety or in part, for any of the uses referred to in Article 9 paragraph 1 item 1 of this Law, to persons in a third country, apart from the persons in the countries referred to in Article 11 paragraph 3 item 1 of this Law:

If a person knew or should have known that the technical assistance, to be provided, is intended or may be intended, in their entirety or in part, for any of the uses referred to in Article 9 paragraph 1 item 1 of this Law he shall notify the Ministry thereof;

Notwithstanding the paragraphs 1 and 2 of this Article, technical assistance may be provided without license, if:
- it takes the form of transferring information that is in the public domain or basic scientific research, in connection with dual use items, or
- for the first commissioning of dual use items for which an export license has already been granted.

**Transit**

**Article 13**

Transit of dual-use items from the List, by land and water, shall be authorized by state authority in charge of internal affairs, along with the approval of the state authorities in charge of defense and foreign affairs.

Transit of dual use items from the List, by air, shall be authorised by the authority in charge of civil aviation along with the approval of the state authorities in charge of defense and foreign affairs.

**Prohibition of Transit**

**Article 14**

An authorisation for transit of dual use items from the List shall not be granted if confirmed that those items are or may be intended, in their entirety or in part, for uses referred to in Article 9 paragraph 1 of this Law.

The costs that may occur due to the prohibition of transit, within the meaning of the paragraph 1 of this law, shall be borne by the applicant.

**License Application**

**Article 15**

Application for issuance of license for export, brokering services and technical assistance (hereinafter referred to as the ’’License’’) shall be submitted to the Ministry.

In addition to the application, referred to in paragraph 1 of this Article, applicant shall submit original purchase contract or original invoice with certified translation thereof and a proof of administrative fee payment.

In addition to the license application for export of dual use items, applicant shall submit a valid original End-User Certificate on the end use of items or International Import Certificate, from the recipient country, issued in accordance with their regulations, not older than six months, and translation, with certified translation thereof.

In addition to the license application for brokering services, applicant shall submit a valid original End-User Certificate on the end use of items or the certificate issued by a competent state authority of exporting country that the original End-User Certificate is kept with them, data on the country of origin, location, type and quantity of dual use items, as well as the data about all persons involved in a transsaction, final destination country and end user.
In addition to the application referred to in paragraph 4 of this Article, the Ministry may request from an applicant to submit International Import Certificate issued by purchasing country in accordance with regulations thereof.

The content and form of the license application shall be prescribed by the Ministry.

**Opinion of the competent authorities**

**Article 16**

Before deciding on license application, the Ministry shall acquire opinion from the state authorities in charge of foreign affairs, defense and internal affairs.

Depending on type and purpose of dual-use items, Ministry shall acquire opinion of other competent authorities as well.

**Criteria**

**Article 17**

When giving their opinion authorities referred to in Article 16 shall take into consideration:

1) state authority in charge of foreign affairs:
   a) International obligations of Montenegro pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons, Biological and Toxin Weapons Convention and Chemical Weapons Convention;
   b) International obligations of Montenegro to enforce arms embargo of the United Nations, Organization for Security and Cooperation in Europe and European Union;
   c) Foreign and security policy, including the issues in relation to:
      - Respect of international obligations of Montenegro, especially sanctions imposed by the United Nations Security Council, international treaties on non-proliferation, as well as other international obligations;
      - Respect of human rights in a country of the final destination;
      - Assessment of the internal situation, i.e. existence of tense situation or armed conflicts in the country of final destination;
      - Keeping peace, security and stability in the region;
      - Conduct of a purchasing country towards the international community, especially its attitude towards terrorism, the nature of its alliances and respect of the international law;
      - Existence of risk that the items, subject to export, shall be re-directed within the country of final destination or shall be re-exported under unfavorable conditions;

2) State authority in charge of defense affairs, within foreign and security policy criteria:
   - National security of Montenegro as well as security of the countries Montenegro has a partnership relations with;
   - Intended end use of dual use items and diversion risks;
3) State authority in charge of internal affairs:
   - Impact on traffic safety

   **Deadline for submitting opinion**

   **Article 18**

   Authorities referred to in Article 16 of this Law are obliged to submit their opinion to the Ministry, within 15 days following that of receiving the request for approval and within 60 days the latest, should the additional checks be needed for a process of giving opinion.

   **Granting license**

   **Article 19**

   The Ministry shall decide on the license application within seven days following that of receiving the opinion from the authorities referred to in Article 16 of this Law, and no later than 70 days following that of the duly submitted license application.

   **License validity period**

   **Article 20**

   License shall be granted for a period of one year and if realization of the contracted export activity lasts longer, the Ministry may extend the license validity period up to the date of completion of export activity, but not longer than two years, from the date of license issuance.

   Notwithstanding the paragraph 1 of this Article, a license referred to in Article 7 paragraph 3 of this Law shall be issued for the validity period of up to two years, and at the request of the exporter it may be extended for one more year.

   **Denial of License Application**

   **Article 21**

   The Ministry shall deny a license application, if:
   1) Authorities, referred to in Article 16 of this Law give negative opinion;
   2) It is confirmed that items for which the license has been requested are subject to the court dispute;
   3) A person provides false data in the license application and in requested documentation;
   4) An exporter fails to ensure inspection of the items or the related documentation, at the request of the Ministry.

   In case of denial of license application the Ministry shall notify applicant the reasons thereof, not disclosing confidential or classified data, in accordance with the law.
Annulment of license

Article 22

The Ministry shall annul the license if it is confirmed that:

1) The criteria, based on which the license was originally granted have changed;
2) The license has been issued based on false or incomplete data;
3) A person fails to comply with the conditions stated in license.

With reference to paragraph 1 of this Article, Montenegro shall not be held responsible for damages caused by annulment of license.

Right to administrative dispute

Article 23

No appeal may be lodged against the acts referred to in Article 19, 20, 21 and 22 of this Law, but an administrative dispute may be initiated.

Notification

Article 24

In case of denial of license application or its annulment, the Ministry shall notify the state authority in charge of foreign affairs, which then, in accordance with the international obligations of Montenegro, informs other countries thereof.

If prior to the license issuance there is information that another country has denied license issuance for identical transaction in the previous three years, when deciding on license application the Ministry shall consult that country.

If following the consultations with the country referred to in paragraph 2 of this Article, the Ministry decides to grant a license, it shall notify the state authority in charge of foreign affairs, which then notifies that country of the reasons for such a decision.

Obligation of the State Authority in Charge of Foreign Affairs

Article 25

In order to implement the dual-use items control regime, state authority in charge of foreign affairs shall update and publish on its web-site the List of countries subjected to embargo imposed by United Nations Security Council, Organization for Security and Cooperation in Europe and the Commission of the European Union.
Obligation of the Customs authority

Article 26

Customs authority may, within its competencies, restrict or prohibit export, provision of brokering services, technical assistance and transit of dual use items and shall immediately inform the Ministry thereof.

Obligations of persons engaged in export, provision of brokering services and technical assistance

Article 27

A person engaged in export, provision of brokering services and technical assistance of dual-use items shall be obliged to:

1) notify the Ministry, in writing, on any occurred changes related to the specific business activity, no later than 15 days;
2) within 15 days after the completed business activity or successive export notify the Ministry thereof and to submit the copy of a license based on which the business activity in question has been conducted and certified copy of the unified customs document.
3) returns the obtained license to the Ministry if the license has not been used, within 15 days following that of license expiry date;
4) at the request of the Ministry and within 60 days from the export of the items, submits the certificate issued by the competent authority of the final destination country or end-user country confirming the receipt of dual-use items (Delivery Certificate).

III. RECORDS

Records of the Ministry

Article 28

The Ministry shall keep records on granted and anulled licenses as well as on denied and rejected license applications, pursuant to this Law.

Documentation, referred to in paragraph 1 of this Law, shall be kept for five years from the license expiration date.

Records of the persons engaged in export, provision of brokering services and technical assistance

Article 29

A person engaged in export of dual use items, provision of brokering services and technical assistance shall keep records, containing the following:

- type and number of license, date of issuance and its validity period;
- description, quantity and value of items and type of shipment;
- name and seat, i.e. name, surname and address of end user and end use of dual use items;
- End-user country
Integral part of records, referred to in paragraph 1 of this Article, shall be invoices, manifests, customs and other dispatch documents related to export of dual use items, provision of brokering services and technical assistance.

Documentation referred to in paragraphs 1 and 2 of this Article shall be kept for five years from the license expiration date.

IV. SUPERVISION

Conducting supervision

Article 30

Supervision over the implementation of this Law and regulations adopted based on this Law shall be conducted by the Ministry. When applicable and depending on the type and purpose of the items the supervision may also be conducted in cooperation with other competent authorities.

Supervision referred to in paragraph 1 of this Article shall be conducted by the Ministry through an authorized officer, in accordance with the law.

The provisions of the Law regulating inspection shall apply to the supervision conducted in accordance with this Law.

Enabling supervision

Article 31

In the process of granting a license as well as after the export license has been granted the Ministry may conduct inspection of dual use-items and the related documentation.

Person engaged in export, provision of brokering services or technical assistance shall be obliged to ensure the insight to the relevant authorities referred to in Article 30 paragraph 1 hereof, during the realization of the business activity, as well as upon its completion.

V. PENAL PROVISIONS

Violations

Article 32

A fine ranging from 2.000,00€ to 10.000,00 € shall be imposed on legal person for violation, if:

1) it is determined that it, without a license of the Ministry:
   - attempted to export or has exported items included in the List (Article 8);
   - provided brokering services (Article 10 paragraphs 1, 2 and 3);
   - provided technical assistance (Article 11 paragraphs 1 and 2 and Article 12 paragraphs 1 and 2);
2) fails to notify the Ministry that items, subject to export, are dual use items which are or may be intended, in their entirety or in part, for uses referred to in Article 9 paragraph 1 of this Law (Article 9 paragraph 2)

3) Fails to notify the Ministry of the changes occurred in relation to the specific business activity (Article 27 paragraph 1 item 1)

4) At the request of the Ministry fails to submit the certificate issued by the competent authority of the final destination country or end-user country confirming the receipt of dual-use items (Delivery Certificate) (Article 27 paragraph 1 item 4);

A fine ranging from 300,00 € to 1,000,00 € shall be imposed on natural person and responsible person in the legal entity for the violations referred to in paragraph 1 of this Article.

In addition to the fine for the violation referred to in paragraph 1 of this Article a protective measure of prohibiting export activities, provision of brokering services and technical assistance may also be imposed, lasting from six months up to two years.

Article 33

A fine ranging from 1.000,00 € to 5.000,00 € shall be imposed on a legal entity for violation, if it:

1) Fails to notify the Ministry or fails to notify the Ministry in time the completed export of dual use items or provided service (Article 27 paragraph 1 item 2);

2) Fails to return the obtained license to the Ministry if the license has not been used, within 15 days following that of license expiry date (Article 27 paragraph 1 item 3);

3) Does not keep detailed records on export, provided brokering services and technical assistance and does not keep documentation for at least five years from the license expiration date.

A fine ranging from 300,00 € to 1,000,00 € shall be imposed on a natural person and a responsible person in a legal entity, for the violations referred to in paragraph 1 of this Article.

VI. TRANSITIONAL AND FINAL PROVISIONS

Regulations for implementation of the Law

Article 34

Secondary legislation for implementation of this Law shall be passed within three months from the day of entry into force of this Law.

Initiated proceedings

Article 35

To the proceedings initiated prior to enforcement of this Law, the provisions of this Law will be applied, provided that it is more favorable to the client.

Termination

Article 36

The provisions of the Law on Foreign Trade in Weapons, Military Equipment and Dual Use Goods (Official Gazette of Montenegro 80/08) shall cease to have effect in relation with dual – use items from the day of commencement of application of this Law.
Entry into force

Article 37

This Law shall enter into force on the eight day following that of its publication in the Official Gazette of Montenegro and shall apply from 1 July 2012. godine.

Number: 31-3/12-1/9

EPA 785 XXIV

Podgorica, 29 May 2012

Parliament of Montenegro 24th assembly

The President,

Ranko Krivokapic, m.p.