



## LEGAL ASPECTS OF THE ENTITIES INVOLVED IN INTERNATIONAL TRANSFERS OF MILITARY AND DUAL-USE

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### Summary

This article defines the concept of military and dual-use goods, explained the term «dual-use technology», highlights some of the issues related to the preservation of state secrets during export operations with this kind of goods. Author defines tangible or intangible goods of military and dual-use, discloses a system of state control over international transfers of military and dual-use system specified regulatory bodies in the field of export controls, and made suggestions to improve certain stages of these processes through reforming national legislation.

**Key words:** military goods and dual-use, dual-use technology, a state secret, the export of goods, control, border procedures.

### Аннотация

В данной статье определено понятие товаров военного назначения и двойного использования, разъяснен термин «технологии двойного использования», освещены некоторые вопросы, связанные с сохранением государственной тайны при осуществлении экспортных операций с такого вида товарами. Автором дано определение материальных и нематериальных товаров военного назначения и двойного использования, раскрыта система государственного контроля международной передачи товаров военного назначения и двойного использования, уточнена система контролируемых органов в области экспортного контроля, внесены предложения о совершенствовании некоторых стадий указанных процессов с помощью реформирования национального законодательства.

**Ключевые слова:** товары военного назначения и двойного использования, технологии двойного использования, государственная тайна, экспорт товаров, контроль, граница, процедуры.

**Introduction.** At the time of the Soviet collapse and the formation of Ukraine as an independent state and the military-industrial complex, located on the territory of Ukraine totaled about 700 defense companies from a total of about 2 million people. [1]

In terms of proper budgeting and within the Union programs, the Ukrainian SSR capacities sufficient to meet the needs of more than 12 republics. During the times of the Ukrainian SSR military-industrial complex developed in terms of new technologies and involving leading experts from all republics were created powerful research institutes and the design bureau with the latest high grocery and industrial equipment.

**Statement of the problem.** The abolition of state defense orders, termination of centralized funding of scientific research and development, loss of production links with enterprises of the former USSR – all this had a negative impact on the present state of the domestic defense industry. Currently, due to lack of funding Ukrainian army is not able to carry out massive procurement of weapons and military equipment. The only possibility of survival and development of enterprises producing military- technical products essentially becomes a global arms market, which is characterized by intense competition.

For the existence of such circumstances it is necessary to restore the productive links between military enterprises within the state model for cooperation of the defense sector and deepen the former Soviet Union economically advantageous international cooperation in the military-industrial complex co-production of weapon systems. This is especially true reform is perceived as not require significant investment in the creation of scientific and technical equipment, technology, test and production base. This will allow to develop and use new technologies, reduce costs and facilitate sample of weapon systems cost savings through the use of available technology and infrastructure [2].

At the time when the rapidly developing Ukraine's relations with other countries in the military-technical cooperation, signed international treaties and conducted joint training on the protection of national security achievements are documents that went to the Ukraine in the legal legacy of the former Soviet Union and new international agreements not exhaustive in terms of the rapid development of political processes in the world. It should be noted that the documentation Soviet times most are closed (secret) and needs to be updated.

**Analysis of the regulatory framework.** A significant amount of development in creating designs of

weapons and equipment covers conducting research development activities «arms». The result of this work is usually «of military and dual-use». As part of the 11th century. Art.1 of the Law of Ukraine «On State Control over international transfers of military and dual-use goods» [2] is set to basic terms used in the study issue.

List (list) of such products approved by the Cabinet of Ministers of Ukraine in accordance with Art. 9 of this Act [2] and is defined in the Annex to the Order of state control over international transfers of military goods, which was approved by the Cabinet of Ministers of Ukraine of November 20, 2003 № 1807. [3]

In Art. 13 Law of Ukraine «On State Control over international transfers of military and dual-use goods» [2] defined the term «dual-use» as «certain types of products, equipment, materials, software and technologies specifically designed for military use, and also works and services associated with them, which, in addition to civil use, can be used for military or terrorist purposes or for the development of products and the use of military, weapons of mass destruction and their means of delivery specified weapons or nuclear explosive devices, including certain types of nuclear materials, chemical, bacteriological, biological and toxic drugs listed by the Cabinet of Ministers of Ukraine».



The lists (list) of goods approved by the Cabinet of Ministers of Ukraine in accordance with Art. 9 of this Act and defined in the Annex to the Order of state control over international transfers of dual-use goods, which was approved by the Cabinet of Ministers of Ukraine of January 28, 2004 № 86 [4].

The term «dual use technology» means specific information in any form, necessary for the development, production or use of products, equipment or materials of dual-use items or services in respect of those goods. This information may be in the form of technical data or technical assistance. Transfer (opening) «military technology» and «dual use technology» may be by reference to Ukraine or abroad in any form (by any means) technology foreign economic and other activities, foreigners or stateless citizenship.

Technical data may be transferred to the relevant material carriers (paper, floppy disk, CD, tape, etc.), and intangible means (phone, fax, email, servers, LAN, Internet, etc.). Technical assistance is usually transmitted by intangible means, including oral transmission, visual and verbal learning during briefings, conferences, meetings, scientific exchange, consultation, visual inspections, demonstrations, lectures, seminars, joint military exercises and so on. That is, one can conclude that the technology of military and dual-use material can be transferred as never materiel. Research and development work on the development of research, design, production and technological base organizations to perform defense contracts, as well as increased mobilization capacity of the economy at the heart of containing classified information, so you need to consider some aspects of national legislation that allows you to move across national borders Ukraine undisclosed information.

The concept of «state secret» is defined by the Law of Ukraine «On State Secrets» [5] is a kind of secret information, which includes information relating to defense, the economy, science and technology, foreign relations, national security and the protection and the rule of law, the disclosure of which could harm national security of Ukraine, and are recognized in the manner prescribed by this Law, state secrets and be protected by the state. According formed items of information

constituting a state secret [6] – single register this information in Ukraine.

Since the publication of formed items of information constituting a state secret, state provides protection and legal protection of registered information in it. The lists is formed by the Security Service of Ukraine which basis on the of the decisions of state expert on secrets of the involvement of information to state secret and public opinions of experts on the application of previous decisions, and in the cases under Art. 12 of the Law of Ukraine «On State Secrets» – pursuant to the court and published in official publications. Moreover, information is considered a state secret since its inclusion in LISS. Sign in list information is the basis for providing documents, products, or other material information media containing this information, secrecy order, which corresponds to the degree of secrecy established for them.

Procedure for treatment of confidential information and protection shall be determined by the Cabinet of Ministers and the Security Service of Ukraine, subject to the requirements established by law.

#### **The main material of research.**

Export and import of military goods can be made by business entities that are established procedure given appropriate authority, except as provided by paragraph 4 of the order granting economic agents authority to carry out the export and import of military and those containing information constituting a state secret, approved by the Cabinet of Ministers of Ukraine on June 8, 1998 № 838 [9].

Dual-use goods may be transferred subject to international transfers of goods (hereinafter – the subject) or foreign business entities (hereinafter – foreign business) if he has a permit or conclusion State Export Control Service. The resolution or conclusion of State Export Control Service to conduct appropriate international transfer of any product or military products, equipment or dual-use material is the basis for the transfer of the importer (end-user) set of technical documentation (technical data) necessary for establishing the operation and use of the product for purpose in the amounts set out in this resolution or conclusion [3; 4]

Relocation of military and dual-use goods across the customs border of Ukraine, their customs control and

customs clearance is carried out in accordance with the laws – the Customs Code of Ukraine and normative acts regulating its use. [10]. When customs clearance of military and dual-use goods subject or foreign entity must submit to the customs authority or permission conclusion of State Export Control Service and other documents required for customs control and customs clearance of goods in accordance with the law. Export, import, temporary import, temporary import of goods that are material carriers who are enrolled in a state secret, carried out in compliance with the legislation on protection of state secrets [2-6; 9-13]. Not allowed to export certain goods to countries for which the UN Security Council established the embargo.

In case the export is carried out to the States in respect of which the Security Council is set to partial embargo to these documents include a copy of relevant opinion of State Export Control Service to conduct negotiations related to the signing of foreign economic agreement (contract) for the export of goods, except under paragraph 4 of the Regulation on the Procedure of state control over the negotiations relating to the conclusion of foreign trade agreements (contracts), international transfers of military and dual-use approved by the Cabinet of Ministers of Ukraine dated 4 February 1998 № 125 [14]. Commitments and guarantees foreign entity – the ultimate consumer of imported goods shall be provided in the form of end user certificate, import certificate or other document. According to Art. 52 Law of Ukraine «On Information» export and import information products (services) shall be in accordance with the laws of Ukraine on foreign trade.

The provisions on the preparation of documents for the transfer of state secrets to a foreign state or international organization approved by the Decree of the President of Ukraine «On some issues transferring state secrets to a foreign state or an international organization» of 14 December 2004 № 1483/2004 [15].

Procedure for customs clearance documents classified as restricted defined by the State Customs Service of Ukraine «On approval of information security under the customs control and customs clearance of goods and vehicles using the cargo customs declaration which



contains confidential information, which is owned by the state» on January 5, 2005 № 5 [13]. Customs clearance of goods at the customs declaration, which are classified restricted access, should be carried out in compliance with the secrecy and confidentiality in areas that meet the requirements of legal acts in the field of information security. At the same time passed through the state border of Ukraine with the permission of ministries, agencies, organizations and institutions (affiliation) previously published material is performed in organizations work, if they contain information on: work performed on the plan closed topics, the Armed Forces of Ukraine, the defense industry, transportation, telecommunications, mineral raw materials and other issues, the publication of which is limited to documents in the field of mystery.

#### Conclusions.

Crossing the border of Ukraine of military and dual-use is very complex and bureaucratic process which is based on using the regulations obsolete. It is necessary to note that the national legislation of Ukraine on the subject of international transfers of goods, during the implementation of export procedures on a number of action for vindication of counterparty international import certificates, proof of delivery and end user certificate that is not fully regulated and enshrined internationally.

So there is one common to all international standard which would oblige the State in whose territory the importer and end users perform actions to stimulate the aforesaid certificates. Also one of the main problems of national legislation should highlight the problem of preservation of intellectual property and the development of military-technical cooperation in the field of exports.

The need for reform of national legislation in the field of customs clearance of cargo crossing the boundaries of military and dual-use is due to the need for Ukraine to ensure active participation in technological exchange and awareness of the need to counter the uncontrolled leakage of Ukrainian foreign technologies, which in turn has hurt your national military-industrial complex and the economy of Ukraine.

Especially need to pay attention to those areas that provide the national security of Ukraine. All businesses and organizations

that go to the core of the defense industry, in addition to the Treasury, shall operate on the basis of commercial calculation. That they should be given priority public contracts, the various benefits and incentives, including tax and so on. This applies, in particular, research institutes and research and development organizations. They need government financial support of investments for the conservation and development of scientific and technological potential state aid in the development of markets for weapons and equipment, scientific and technical cooperation with foreign countries. Without a careful selective state protectionism, most of them will not be able to adapt and operate successfully in a market economy. It should be noted that after the abolition of the common order of the State Service for Export Control, Security Service and State Customs Service of Ukraine from 05.06.2003 № 135/222/386 «On approval of the interaction of Ukraine, Security Service of Ukraine and the State Customs Service of Ukraine in the exercise of state control of international transfers of special purpose» were gaps in the scheme of interaction of the State Customs service of Ukraine State service of Export control of Ukraine.

This is especially true of the actual procedure of import/export of military and dual-use entities involved in international transfers of goods that have issued general permit or an open or conclusion. This can be used to abuse in this field and could harm the economy of Ukraine.

In carrying out procedures for reforming national legislation, to consider and mistakes of the world's leading arms. These leaders are the U.S., Russia, France, Germany, Great Britain, Italy, China, Netherlands, Belarus and Ukraine, occupying 92% of the world's supply of weapons and military equipment. Also to succeed in the global arms market entities defense industry of Ukraine should develop and continuously improve a comprehensive strategy to fight the market, which takes into account the trend of the world market and was based on the competitive advantages of the national defense industry.

In order to gain new markets for Ukraine arms and selection strategy of military-technical cooperation is a prerequisite for the study of a particular region, the military and political balance

of power in it, the financial capacity of the country, the ratio of the importing countries to exporting military presence traditional exporters in this market and so on.

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## ПРАВОВОЕ РЕГУЛИРОВАНИЕ ИСПОЛНИТЕЛЬНОГО ПРОИЗВОДСТВА: ОПЫТ ЗАРУБЕЖНЫХ СТРАН И ВОЗМОЖНОСТИ ЕГО ВНЕДРЕНИЯ В УКРАИНЕ

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### Summary

The article presents the results of deep analysis of legislation and regulatory practices of enforcement proceedings in countries such as Moldova, Tajikistan, the United States, Israel, Germany, Finland Republic and other. Made positive findings for Ukraine to improve domestic regulatory enforcement proceedings. The author proved that the implementation of these proposals in the legislation of Ukraine can significantly improve the enforcement proceedings and, therefore, increase the level of protection of the rights, freedoms and legitimate interests of citizens.

**Key words:** executive production, experience, regulation, foreign countries, experience of foreign countries.

### Аннотация

В статье приводятся конечные результаты глубокого анализа законодательства и практики правового регулирования исполнительного производства в таких странах, как Молдова, Таджикистан, США, Израиль, Германия, Финляндская Республика и других. Делаются позитивные выводы для Украины в вопросах усовершенствования правового регулирования отечественного исполнительного производства. Автор обосновано, что внедрение указанных предложений в законодательство Украины может существенно улучшить исполнительное производство и, следовательно, повысит уровень защиты прав, свобод и законных интересов граждан.

**Ключевые слова:** исполнительное производство, опыт, правовое регулирование, зарубежные страны, опыт зарубежных стран.

**Постановка проблемы.** С развитием общественных, экономических и хозяйственных, гражданских, административных правовых отношений развиваются и усложняются, соответственно, и правоотношения, которые складываются в сфере принудительного исполнения решений юрисдикционных органов. Вследствие чего и увеличивается количество видов производств в рамках процесса реализации соответствующими органами полномочий по принудительному исполнению решений, что и обусловило формирование исполнительного процесса, который и составляют разнообразные виды исполнительных производств. Считаем, что для характеристики содержания деятельности уполномоченных органов и должностных лиц по принудительному исполнению решений юрисдикционных органов действительно целесообразно применять термин «исполнительный процесс».

Исполнительный процесс возникает с момента подачи взыскателем в соответствующий отдел ГИС заявления о принудительном исполнении решения, которое рассматривается в подготовительной стадии и лишь после вынесения постановления об открытии отдельного конкретного исполнительного производства и начинается исполнительное производство по конкретному делу. Исполнительное производство начинается только после вынесения постановления об открытии отдельного исполнительного производства, а открывается оно относительно принудительного исполнения конкретного решения юрисдикционного органа, а отдельное исполнительное производство возникает и существует в рамках исполнительного процесса и реализуется через совершение определенных действий, которые составляют исполнительное производство.

**Актуальность темы исследования** связана с тем, что в процессе осуществ-