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Polish approach to the export control system

1. Background

In Poland, works on building a control system of foreign trade in goods and technologies of strategic relevance were initiated in 1991. The Polish government declared a strong intention to implement the system, which would comply with world's standards as well as its readiness to participate in the international co-operation in this field.

At present Poland is a member of all non-proliferation organisations and groups (Organisation for the Prohibition of Chemical Weapons – OPCW, Comprehensive Nuclear-Test-Ban Treaty Organisation – CTBTO, Wassenaar Arrangement, Australia Group - AG, Nuclear Suppliers Group - NSG, Zangger Committee, Missile Technology Control Regime – MTCR) and a party to all treaties and conventions.

At the end of the 90-ties preparations of Poland to the accession to the European Union caused the necessity to modify legal regulations, mechanisms and procedures pertaining to the control of foreign trade in dual-use goods and technologies as well as munitions with a view to the harmonization with the EU legal framework.

Until the end of the year 2000 the above mentioned control was regulated in Poland by two separate acts. One of them referred to the control of international trade in dual use goods and technologies, the other one referred to the control of trade in weapons and military equipment.

On 1 January 2001, a new, single act (*Law of foreign trade in goods, technologies and services of strategic importance to the security of the state and to maintaining international peace and security*) came into force, setting the same mechanisms and procedures of licensing and control of international trade in dual use goods and technologies, as well as in weapons. It regulates the rules of international trade in goods, technologies and services of strategic relevance for the state security, the principles of control and recording of the trade, as well as the range of responsibilities for the illegal trade in the above mentioned goods, technologies and services.

2. Current situation

With few amendments, the above mentioned Law is still in force (Dz.U. of 2004, No 229, item 2315).

At present, the Polish export control system is based on European Union and national legislative acts that lay down the rules for activities related to trading in dual-use goods and technologies (EU and national legislation) and military equipment (national legislation).

In dynamically growing economy governmental administration cannot control each and every foreign transaction with entrepreneurs' trade activity unharmed, e.g., delays in

transactions' realisation due to long-lasting procedures. Rigorous export control would result in the occurrence of procedures and mechanisms paralysing arms, military equipment and dual use goods and technologies' export - what could cause the limitation of Polish entrepreneurs' economic activity.

To ensure that the foreign trade control system is "entrepreneurs' friendly", the export control should start at the entrepreneur's through self-control mechanisms' implementation that will allow shortening administration procedures.

Therefore, we offer to the entrepreneurs a mechanism, which allows for greater independence in trade and for increase of transactions profits, provided, however, that entrepreneurs implement, maintain and improve the self-control mechanisms. To achieve all these, a control and management system, namely the Internal Compliance System, should be used.

This system does not restrict the freedom of Polish entrepreneurs, making at the same time the cooperation with government administration authorities possible.

The entrepreneurs, who have implemented and use the self-control mechanisms, stand out against other entrepreneurs taking part in the sales of goods and are considered as reliable and trustworthy partners in the supply chain. They should be particularly specific in the assessment of exported goods and types of goods, itinerary, transport type, and other partners, as well as the risk level of goods being delivered to undesirable recipients.

Such measures allow many mistakes to be eliminated, so that the enterprises may become more reliable and recognised as partners to the trade control system.

From the management point of view the Internal Compliance System functions as an instrument protecting the company against activities incompatible with trade control national requirements and international obligations in this field.

Having their own Internal Compliance System, Polish companies will be able to protect their commercial interest and image in the eyes of foreign partners.

In order to facilitate establishment of self-control mechanisms and procedures in enterprises, a standard was developed, namely the Polish Standard - Internal Compliance System - Requirements PN-N-19001:2006, which permits implementation of the abovementioned system in every enterprise, according to a single and uniform standard. Application of the procedures provided for in the standard will facilitate future electronic communications between the entrepreneurs and the Ministry of Economy.

On the webpage: <http://mg.gov.pl/GOSPODARKA/DKE/Wewnetrzny/>, the Export Control Department of the Ministry of Economy put a program that enables entrepreneurs to establish their own ICS in compliance with standards and legal regulations in force.

Efficiently operating Internal Compliance System in place is beneficial for the entrepreneur, as:

- it prevents law infringement and potential sanctions resulting therefrom;
- it simplifies official procedures involved in obtaining export license;
- it facilitates the contact and cooperation with the government administration authorities;
- it specifies competency requirements assigned to employees by owners of individual enterprises;
- it increases the employees' awareness of the threats associated with insufficiently checked contractors, and of financial and legal consequences arising that fact;
- it keeps the employees knowledge up-dated;
- it gives the possibility to carry out a detailed analysis of goods classification, as well as an assessment of future contractors, and an analysis of transactions' security and legality;

- it allows to straighten up the procedures historically in place in the enterprise, with the view that human resources will be managed by entrepreneurs more efficiently.

Until recently, implementation and maintenance of the Internal Compliance System was perceived by some entrepreneurs as a necessity resulting from legal obligations rather than a chance to benefit from a well functioning system.

In recent years, the self-control mechanism, in place in some enterprises, allowed for attracting new commercial partners, from the EU Member States as well as from other countries.

The events of recent years show clearly today that if a company wants to achieve success in business, the implementation of the Internal Compliance System becomes a must.

To ensure better understanding of all participants' role in the trade control system, Export Control Department of the Ministry of Economy - in cooperation with a training company - organises trainings for all interested entrepreneurs, that help companies to implement Internal Compliance System mechanisms and to train people responsible for functioning of this system in their companies. Currently, entrepreneurs taking part in international trade of goods of strategic importance are main participants in these trainings. However, current global tendencies and experiences in countering terrorism indicate that these trainings should also be carried out in universities, scientific research institutes and other technological know-how centres, since these organisations are at a disposal of so called "intangible transfer of technologies".

In May 2001, the Ministry of Economy received, as a donation from the US Government, computer hardware and software to automate the licensing process of international trade in goods, technologies and services of strategic importance for the state security.

The advantages of the implementing of this system, called TRACKER are:

- better and more efficient information exchange between the relevant units of the Export Control Department;
- easy access to data collected in Tracker;
- more efficient and faster reviewing of applications;
- faster and easier communication and consultation with other ministries involved in licensing process;
- more efficient and faster decision-making;

3. Future

Our goal is to contribute to the process of increasing competitiveness and innovation level among Polish entrepreneurs, through simplification of the licensing process in foreign trade in strategic goods.

Striving to achieve this goal, the Export Control Department intends to:

- introduce more transparent rules in foreign trade exchange (by encouraging entrepreneurs to place their comments on the website of the Export Control Department and to address issues important for entrepreneurs);
- limit the number of individual export licenses (issue general and global export licenses instead);
- introduce changes to make trading with NATO Member countries easier for entrepreneurs.