

PRIMERJAVA RAZLAG CIVILNE IN VOJAŠKE OPREME V EVROPSKI IN MADŽARSKI SODNI PRAKSI

INTERPRETATION OF CIVILIAN VS. MILITARY EQUIPMENT IN EUROPEAN CASE LAW – EU AND HUNGARY

Povzetek Predpisovanje izdelkov, primernih za civilne in obrambne namene, se mogoče zdi obrobna tema, vendar vpliva tako na notranjo kot na zunanjo varnost. V članku predstavljamo poseben primer teh predpisov. Čeprav v Evropski uniji obstaja pravni okvir za uporabo v nacionalni zakonodaji, madžarski organi uporabljajo drugačno prakso, ki je pogosto v nasprotju z duhom veljavnih zakonov EU. Posledično sta izvoz in uvoz nekaterih izdelkov z dvojno rabo po madžarski zakonodaji bolj zapletena, kot je predvideno v zakonodaji EU, kar omejuje možnosti poslovanja podjetij na tem področju. Namen članka je predstaviti pravni okvir za temi predpisi in kakšne težave lahko povzroči udeležencem na trgu to, da jih pristojni nacionalni organi različno razlagajo.

Ključne besede *Oprema z dvojno rabo, EU, Madžarska, pravni okvir, zakonodaja v primerjavi s sodno prakso.*

Abstract The regulation of products suitable for both civilian and defence purposes may seem to be a marginal area; however, it affects both inner and outer safety. We present a peculiar case of this regulation: even though the EU legal framework exists for implementation in national laws, the Hungarian authorities follow a different practice, often conflicting with the spirit of the applicable EU laws. As a result, the export and import of specific dual-use products under Hungarian law is more complicated than that intended by EU law, which restricts the ability of companies in this area to conduct their business operations. The aim of the article is to present the legal framework behind the regulations, and to demonstrate the difficulties the inconsistent interpretation of these by the applicable national authorities can cause to market participants.

Key words *Dual-use equipment, EU, Hungary, legal framework, legislation vs case law.*

Introduction

Items that qualify as both civilian and defence products or equipment¹ are members of a generally unknown and not particularly widespread product group, but are also of particular importance to individual Member States and the European Union (EU), as the majority of them are defence-related, and, as a result, indirectly affect both national and common defence policies.

Considering the foregoing, it is rather surprising that these products or equipment are relatively underrepresented in legislation all around the world, and have a modest amount of relevant case law, especially compared to EU legislation and case law. However, the area is indisputably important, given that dual-use items and equipment, alongside defence policy, have a significant impact on the (military) development of nations and the EU as a whole, influence the budget, and play a key role in the field of judicial cooperation. This is further exacerbated by the fact that there has been absolutely no research carried out in this area, so there is no literature and no comparisons exist even at the EU level.

Furthermore, these products have gathered even more importance following the recent geopolitical incidents (e.g. the use of dual-use products during the invasion of Ukraine).

Dual-use items² specified in Annex 1 of the EU Common Military List – i.e. products and equipment covered by the ML1 (Military List)³ – are considered to be the most problematic. The products belonging to ML1 are mostly smooth-bore weapons with a smaller calibre or other arms and automatic weapons with a given calibre and their accessories. For some specific types of products and equipment under ML1 which will be discussed later, EU legislation constitutes a small set of provisions overlapping and contradicting not only each other in several aspects, but also some distinct national laws and a completely different set of case law.

The aim of this article is to present the challenges in the legal framework of the EU and Hungarian regulations for specific products and equipment belonging to ML1, and to show the difficulties an incompetent authority can cause to market participants. Furthermore, the article also aims to show the discrepancies between the EU and Hungarian legislation through a Hungarian example which is rather surprising, as no literature is available on solving any upcoming issues in this area.

¹ Note that the legislation dealing with this area uses both terms depending on the exact EU legislation, which will be detailed later in the present article.

² Note that the present article only deals with the comparison and overlap of civilian and defence products or equipment, so it does not cover general dual-use products or equipment.

³ The Military List is based on the Council Common Position 2008/944/CFSP of 8 December 2008, which defines the common rules governing the control of exports of military technology and equipment, and which is updated annually pursuant to it. However, it was only in 2020 that the latest Military List – the COMMON MILITARY LIST OF THE EUROPEAN UNION adopted by the Council on 17 February 2020 (equipment covered by the Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment) – was issued.

1 METHODS

Since the aim of the article is to present the legal regulations on ML1 and the collision of EU and Hungarian legislation, the most effective method was to collect the relevant laws, comparing them and drawing up similarities and discrepancies between them. It was also necessary to collect and review several judicial decisions on the effectiveness of the laws and to analyze the practice of the Hungarian authorities, in order to be able to present the collision of the practice with the effective regulations.

It was also important to collect data on the economic effect of ML1 products and equipment, as it shows the relevance of the topic under discussion.

The coverage of ML1 within EU law can be considered relatively narrow; there are only three parts of laws giving the regulatory framework: ‘Parliament and Council Directive 2009/43/EC’ (2009) on transfers of defence-related products within the EU; ‘Council Regulation (EC) No 428/2009’ (2009) on the control of dual-use equipment; and ‘Council Directive 2021/555/EC’ (2021) on the acquisition and possession of weapons. The relevant law has been dealt with in a very small number of decisions by the EU judicature, as well as in national courts and authorities, but without addressing the most pressing issue: the deviating case law of national authorities with regard to the export of ML1 items.

2 RESULTS

2.1 Definition and content of the ML1 list: civilian versus defence-related products

ML1 is defined in the Annex to Directive 2009/43/EC, and – according to its title – covers the following items with a precise technical description: smooth-bore weapons with a calibre of less than 20 mm; other arms and automatic weapons with a calibre of 12.7 mm (calibre 0.50 inches) or less and accessories; and specially designed components therefor, such as rifles and combination guns, handguns, machine, sub-machine and volley guns.

The ML1 list also includes specific types of smooth-bore weapons (such as those specially designed for military use or of the fully automatic type), weapons using caseless ammunition, and accessories designed for these types of weapons. It should be emphasized, however, that the ML1 list does not address⁴ certain types, such as not fully automatic weapons, antique weapons, deactivated firearms and, most importantly, smooth-bore weapons used for hunting or sporting purposes which are

⁴ The term used here is particularly important when it comes to the different language versions, especially with regard to the Hungarian version. The term used in the Directive is »nem engedélyköteles« in Hungarian, »does not control« in English, »erfasst nicht« in German, »ne vie pas« in French and »ei asetete« in Finnish, suggesting that various lawyer-linguists from different nationalities interpret and translate certain terms in a different manner, and as a result, each national court may have a divergent interpretation of the same law. This results in the incoherent practice of the Hungarian authorities to be presented later in this article.

not specially designed for military use or of the fully automatic firing type (known as shotguns⁵) (Note 1 of Directive 2009/43/EC).

Directive 2021/555/EC specifies and, contrary to Directive 2009/43/EC, even classifies firearms and accessories (such as ammunition and projectiles) into four categories: where the purchase and possession of firearms and ammunition falling under Category A are prohibited (except where this is not contrary to public security or public order), Category B firearms and ammunition are subject to specific authorisation requirements⁶. Taking a closer look at the list of firearms and ammunition in each category⁷, one can conclude that there is a partial match with the items regulated under the ML1 list of Directive 2009/43/EC.

Directive 2009/43/EC set out a rather exact, exhaustive list in this respect. The problem, however, lies in the fact that some products or equipment on the ML1 list are considered essentially dual-use, given that such items qualify as equipment intended for both civilian and military use. This is illustrated by a (rather ambiguously worded) provision of Directive 2009/43/EC, which effectively states in the form of a »Note«⁸ that ML1 does not control smooth-bore weapons used for hunting or sporting purposes if not specially designed for military use or of the fully automatic firing type.

Accordingly, a specific group of smooth-bore weapons used for hunting or sporting purposes do not require – and as such, can be transferred within the EU without – any authorization⁹. The scope of the exceptions is reinforced by the non-binding¹⁰ preamble of Directive 2009/43/EC which is without prejudice to the application of Directive 2021/555/EC. Furthermore, it is set out in Article 2 of Directive 2021/555/EC that it does not apply to commercial transfers of weapons and ammunition of war.

⁵ *Firearms with smooth-bore barrels are, in practice, shotguns (Fábián 2015, p 17.).*

⁶ *Categories C and D are not included in the present article as the products and equipment they deal with cannot be regarded as dual-use products or equipment, and are therefore not connected to the subject of this article.*

⁷ *Category A covers the following products: explosive military missiles and launchers; automatic firearms; firearms disguised as other objects; ammunition with penetrating, explosive or incendiary projectiles, and the projectiles for such ammunition; and pistol and revolver ammunition with expanding projectiles and the projectiles for such ammunition, except in the case of weapons for hunting or for target shooting, for persons entitled to use them. Category B includes: semi-automatic or repeating short firearms; single-shot short firearms with centre-fire percussion; single-shot short firearms with rimfire percussion whose overall length is less than 28 cm; semi-automatic long firearms whose magazine and chamber can together hold more than three rounds; and semi-automatic long firearms whose magazine and chamber cannot together hold more than three rounds, where the loading device is removable or where it is not certain that the weapon cannot be converted, with ordinary tools, into a weapon whose magazine and chamber can together hold more than three rounds. Annex I, point II of Directive 2021/555/EC.*

⁸ *It is worth noting that in this case, the wording of the Directive is consistent in each language and there was no discrepancy in this aspect.*

⁹ *Authorization means a transfer licence in this case, governing the transfer of defence-related products within the EU, as stated in Article 1(1) and Article 3, Points 2, 5 and 6 of Directive 2009/43/EC.*

¹⁰ *The preamble to an EU act has no binding legal force, as established in the judgement Deutsches Milch-Kontor GmbH v Hauptzollamt Hamburg-Jonas, (2005) paragraph 32.*

Table 1:
Comparison of
the currently
effective EU
laws regulating
smooth-bore
weapons¹¹

Directive 2021/555/EC	Directive 2009/43/EC (ML1)
<p>Category A - Prohibited Firearms</p> <ul style="list-style-type: none"> - Explosive military missiles and launchers - Automatic firearms - Firearms disguised as other objects - Ammunition with penetrating, explosive or incendiary projectiles, and the projectiles for such ammunition - Pistol and revolver ammunition with expanding projectiles and the projectiles for such ammunition, except in the case of weapons for hunting or for target shooting, for persons entitled to use them - Automatic firearms which have been converted into semi-automatic firearms - Special centre-fire semi-automatic firearms - Semi-automatic long firearms, that is to say firearms that are originally intended to be fired from the shoulder, that can be reduced to a length of less than 60 cm without losing functionality by means of a folding or telescoping stock or by a stock that can be removed without using tools - Any firearm in this category that has been converted to firing blanks, irritants, other active substances or pyrotechnic rounds, or into a salute or acoustic weapon <p>Category B – Firearms Subject to Authorization</p> <ul style="list-style-type: none"> - Repeating short firearms - Single-shot short firearms with centre-fire percussion - Single-shot short firearms with rimfire percussion whose overall length is less than 28 cm - Semi-automatic long firearms whose magazine and chamber can together hold more than three rounds - Semi-automatic long firearms whose magazine and chamber cannot together hold more than three rounds, where the loading device is removable or where it is not certain that the weapon cannot be converted, with ordinary tools, into a weapon whose magazine and chamber can together hold more than three rounds - Repeating and semi-automatic long firearms with smooth-bore barrels not exceeding 60 cm in length - Semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms - Any firearm in this category that has been converted to firing blanks, irritants, other active substances or pyrotechnic rounds, or into a salute or acoustic weapon. 	<p>Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12.7 mm (calibre 0.50 inches) or less and accessories, as follows, and specially designed components therefor: rifles, carbines, revolvers, pistols, machine pistols and machine guns</p> <p>Smooth-bore weapons:</p> <ul style="list-style-type: none"> - Smooth-bore weapons specifically designed for military use; - Other smooth-bore weapons <ul style="list-style-type: none"> - of the fully automatic type; - of the semi-automatic or pump-action type; - Weapons using caseless ammunition; - Silencers, special gun-mountings, clips, weapons sights and flash suppressors for such arms

¹¹ These items are subject to authorization or prohibition based on the effective EU laws.

Table 1 demonstrates basic deviations with certain overlaps (emphasized in bold) in the material scope of the two Directives, which – especially the Notes of Directive 2009/43/EC – give rise to interpretation issues with regard to the equipment specified under ML1. Such issues are, however, mostly discernible through the case law.

2.2 ML1 and the relevant case law

The major difficulties of interpretation with regard to ML1 are discernible through case law, where national authorities have, in many cases, taken different approaches to it. National authorities often construe items listed in Note 1 Directive 2009/43/EC as defence-related products, and apply the provisions governing defence-related products accordingly.

Investigation of the available community case law shows that the Court of Justice of the European Union (CJEU) has addressed Directives 91/477/EEC (1991)¹² and 2009/43/EC and Regulation (EC) No 428/2009 in relatively few cases, and that the available court decisions do not deal with these issues, either¹³.

On the other hand, in the well-known case of *Zeman* (2014), of the available judgments passed in a preliminary ruling procedure, the CJEU specifically examined the conformity of hunting and sporting weapons legislation with Slovakian law. The CJEU established that one of the objectives of Directive 91/477/EEC was to prohibit the cross-border transfer of firearms (other than weapons for hunting or target shooting) within the EU, and that it carved out a simplified procedure for hunters and target shooters.

This stance of the CJEU was confirmed later, as it was declared in the *Czech Republic v Parliament and Council* (2019) that Directive 91/477/EEC contains rules intended to harmonize the Member States' administrative measures relating to the movement of firearms for civil use, and that the provisions of Directive 91/477/EEC govern firearms acquired and possessed by private persons, including the obligation to obtain authorization or to submit a declaration, and also with regard to prohibitions.

2.3 A problematic approach in national case law: Hungary versus the Member States

So far, this paper has discussed the reasons underlying the fact that ML1 may give rise to some controversies. It is also worth looking at national case law, which – through an examination of the superficial community law – will help to better understand the importance of the area at issue at both community and national level.

¹² Note that up to now (15 March 2022) no decision has been made or even any procedure started concerning Directive 2021/555/EC.

¹³ For example, the CJEU has not addressed Regulation (EC) No 428/2009 or Directive 2009/43/EU at all, which signals that the legal framework of dual-use items and defence-related products is actually not present in EU case law.

Of the national case laws of the 27 Member States, Hungarian case law deserves particular attention, given that, contrary to other national case laws, it uses a completely different approach to address the scope of ML1 products and the relevant authorization processes. Hungarian case law basically has two segments: judicial and administrative case law, which can be considered to be fundamentally contradictory and do not even fully comply with the legal provisions.

2.3.1 Judicial decisions

Judicial decisions mostly deal with ML1 in the area of dual-use items, taking into account – in almost all cases – the relevant expert opinions.

According to a decision by a lower Hungarian court, Case B.1059/2007.30 (2007) of the Csongrád County Court, also citing an expert opinion, many items that can now be used as children's toys are also considered military equipment under the laws; but the court is always bound by the legal provisions, regardless of whether the law in question is considered obsolete or not.

Another decision, Case B.255/2009.82 of the Metropolitan Court (2009), established that the classification of certain equipment in appropriate categories (i.e. military or non-military equipment) made the work of the experts and staff of the Special Service for National Security¹⁴ responsible for investigations more complicated.

Furthermore, in a different decision, Case Bhar.280/2018/6 of the Metropolitan Regional Court (2018), the court concluded that a military rifle charge may not be used for civilian purposes, and therefore did not qualify as ammunition for civilian firearms having a privileged status under the laws governing military equipment. The case involved the felony of abuse of firearms, given that the perpetrator retained a military rifle charge for sentimental reasons. The interpretation of the body applying the law – i.e. that the scope of small arms goes beyond firearms that can be acquired and possessed by a civilian with a licence, regardless of the fact that the concept of small arms has not been defined – is worth noting in this case.

Additionally, another decision, Case 4.Bf.15/2013.I of the Metropolitan Regional Court (2013) – also in the field of criminal law – which helps to interpret a similar case should also be mentioned. According to this decision, Hungarian law, contrary to EU legislation, does not specify technical parameters for clandestine intelligence-gathering equipment, but in the case of unsuitability, such items are not to be considered as instruments of abuse of military products. According to this decision, if an item is unsuitable for military use, it is not considered a military product or equipment, but rather a civilian item.

Examination of the decisions demonstrates that Hungarian case law always clearly follows the strictest interpretation of the letter of legal provisions, even in cases

¹⁴ In Hungarian: *Nemzetbiztonsági Szakszolgálat*.

where equipment cannot be unequivocally classified or its technical parameters cannot be established, and hence various exceptions listed may apply.

2.3.2 Administrative procedures

The case law of public authorities, on the other hand, is significantly more complex, as there is a greater overlap of material competence between the various authorities, and as such, it is not always clear which authority is acting in a given case and why.

The authorization of military equipment and responsibilities with regard to dual-use items are assigned to the Government Office of the Capital City of Budapest Department of Trade, Defence Industry, Export Control and Precious Metal Assay¹⁵ (BFKH) as of 1 January 2017¹⁶. The licensing of firearms is a police competence¹⁷; but it should be stressed that the police may grant different types of licences for firearms for specific purposes set out in an exhaustive list (i.e. self-defence, work, film production, target shooting, education, sport shooting, protection of people and property, hunting)¹⁸. Accordingly, there are two authorities with the material competence for authorization processes, which overlap in certain cases – including ML1 products, in particular firearms used for hunting and target shooting – where inadequately regulated distinctions are not reflected in the case law either.

In order to clarify the overlaps in material competences, the National Advocacy Association of Hungarian Firearms and Ammunition Traders¹⁹ (the Association)²⁰, a trade association of Hungarian firearms and ammunition traders in both Hungary and in the Member States of the European Union, as well as in other domestic and international relations, repeatedly requested the position of certain government Ministries and bodies between November 2018 and January 2020. These requests focused on three major issues: first, whether the trade of bullet weapons and ammunition that are not specifically for military use (i.e. for hunting or sporting purposes) requires a specific military licence, or whether a police licence is sufficient; second, how an undertaking with a military licence may trade firearms and ammunition imported as military equipment as products for hunting and sporting purposes, provided that such items are covered in the list of exceptions under ML1; and the third question was aimed at clarifying the extent to which case

¹⁵ In Hungarian: Budapest Főváros Kormányhivatalának Kereskedelmi, Haditechnikai, Exportellenőrzési és Nemesfémhitelesítési Főosztálya.

¹⁶ Prior to 1 January 2017, the relevant tasks were carried out by the Hungarian Trade Licensing Office (in Hungarian: Magyar Kereskedelmi Engedélyezési Hivatal; (MKEH)); however, with regard to the information available on their website, only the name of the authority was modified, without any substantial changes. (Section 2(2)(b) and Section 2(3) of Decree 365/2016 (XI. 29.) Korm. on assigning the Government Office of the Capital City of Budapest as the authority for specific industrial and commercial matters and the regional metrology and technical safety authorities).

¹⁷ Section 3(1) of Firearms and Ammunitions Act.

¹⁸ Section 2 point 43 of Firearms and Ammunitions Act.

¹⁹ Registration number: Cg.01-02-0011564; Registered office: H-1118 Budapest, Nagykőrösi út 24./ A.; Represented by: Ákos Szűcs.

²⁰ In Hungarian: Magyar Lőfegyver és Lőszerkereskedők Országos Érdekképviseleti Szövetsége

law is consistent with the relevant Hungarian and EU laws²¹. The reactions to these requests, however, have shown perfectly well that the Hungarian approach in this area is completely different from the case law of some EU Member States, given that the Ministry of the Interior²² referred the Association to the Ministry of Innovation and Technology (ITM).²³ Furthermore, in its response to the request, the ITM stated that it considers the provisions of Directive 2009/43/EC and the transposing Hungarian laws to apply to all ML1 products, without taking into account the provisions of other laws, including Directive 91/477/EEC²⁴. The Association also consulted the BFKH, and received a statement that all ML1 products under Directive 2009/43/EC are considered suitable for specific military, national security, law enforcement and policing purposes, regardless of the purpose of its actual end use. The BFKH also stated that the term ‘suitable’ was not an equivalent to being specifically designed for military, national security or other purposes, referring to both the functional and the technical approach²⁵, and it has not changed its position even after several comments and consultations²⁶.

Foreign case law was explored in the context of Hungary and Romania, where a Romanian company submitted a request for a position to the National Police Headquarters (ORFK)²⁷ to clarify the authorization obligation for dual-use items. In its position, the ORFK stated that if firearms and ammunition to be imported or exported for commercial purposes fall under ML1, their authorization is subject to the material and territorial competence of the BFKH. If such activity is solely related to equipment covered by Directive 91/477/EEC, its authorization falls under the material competence of the police²⁸.

It should be noted that the Romanian company in question submitted certificates²⁹ issued by several manufacturers established in EU Member States.

²¹ Each request was processed on the basis of the responses, using the file numbers set out in the request for identification purposes.

²² In Hungarian: *Belügyminisztérium*.

²³ In Hungarian: *Innovációs és Technológiai Minisztérium*.

²⁴ Letter of response to the request for a position on the interpretation of the laws governing the military activities of the Ministry of Innovation and Technology; Ref. IPFO/67659-1-2018/ITM.

²⁵ Position of the Government Office of the Capital City of Budapest in response to a request; Ref. BP/15-HTO-Á/671-2/2018.

²⁶ Position of the Government Office of the Capital City of Budapest in response to a request; Ref. BP/15-HTO-Á/671-6/2018.

²⁷ In Hungarian: *Országos Rendőr-főkapitányság*.

²⁸ Position No. 29000/30619-1/2018. *ált. of the National Police Headquarters*

²⁹ The manufacturer's certificates were issued by the following companies: *Ceska zborjovka a.s.* (Registered office: Svatopluka Cecha 1283, 688 01 Uhersky Brod, Czech Republic; Registration number: 46345965); *Sellier & Bellot a.s.* (Registered office: Lidicka 667, 258 01 Vlasim, Czech Republic; Registration number: 28982347); *Sako Limited* (Registered office: 11101 Riihimäki, Finland); *RUAG Ammotec GmbH* (currently *RUAG MRO Holding AG*; Registered office: Seetalstraße 175, 6032 Emmen, Switzerland); and *Meopta – optika s.r.o.* (Registered office: Kabelikova 1, 750 02 Prerov, Czech Republic; Registration number: 47677023); and such certificates were issued in a specific commercial case. A separate authorization was issued for the use of the manufacturer's certificates in this study.

The Association's requests for a position from the ITM were accompanied by these certificates, in which each manufacturer clearly declared that the firearms, ammunition and other equipment manufactured by them and sold to a Hungarian company were exclusively intended for civilian use. However, these certificates were completely ignored by the Hungarian authorities when formulating their position.

All this raises the need – with special emphasis on the case law³⁰ of the Court of Justice of the European Union – for the verbatim transposing of certain parts of Directive 2009/43/EC³¹. The necessity for such a review is substantiated by the statistics available on ML1, according to which ML1 items with a total value of EUR 2,429,150.00 were imported into Hungary in 2019³². These statistics are not suitable for determining those cases where the authorities handled these items, which were subject to defence-related product exception, as defence-related products³³.

2.3.3 Economic relevance

The importance of the presented issue may also be understood by reviewing the value of ML1 products and equipment within Hungary. The chart below summarizes the development of Hungarian export and import data for ML1 products from 2013 onwards³⁴, but it does not indicate whether the equipment mentioned in the Note 1 of Directive 2009/43/EC were included when calculating these values³⁵.

³⁰ *Commission of the European Communities v Kingdom of the Netherlands (1990)*.

³¹ *Commission of the European Communities v Kingdom of the Netherlands (1990)*

³² Source: COARM public v2 (2021).

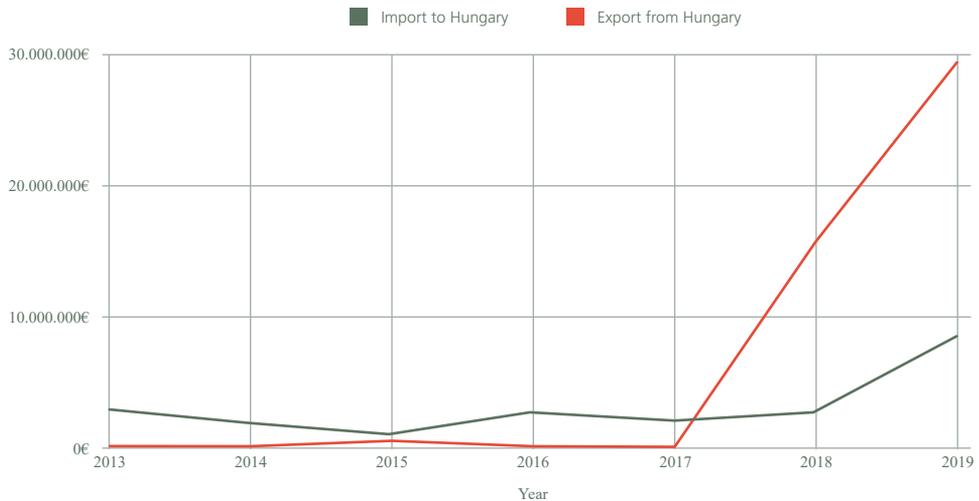
³³ It should be noted that the Hungarian authorities do not submit adequate data to the Stockholm International Peace Research Institute (SIPRI), they provide relatively few data, which as a result, is unsuitable for analysis.

³⁴ SIPRI has been collecting these data since 2013 in respect of Hungary, and therefore, the processing of such data is also relevant from that date.

³⁵ It is noteworthy that the relevant data is collected, managed and processed by the BFKH; however, they do not disclose any adequate or meaningful data with reference to a law (i.e. Act XXIX of 2004 on the amendment and repeal of certain laws, as well as the establishment of certain regulations relating to Hungary's accession to the European Union). In its response to a request dated 17 February 2021, the BFKH only noted – without attaching any identification or case file number to the request – that no applications for the authorization of ML1 products or equipment had been refused, and that since 2005 a total of 1,136 applications for authorization had included ML1 products or equipment.

The foregoing, however, raises an issue with respect to the transparency and traceability of the activities and operations of the BFKH – given that the purpose of the requested data and their use is solely scientific – if it is impossible to make data available even for scientific purposes, in a form that cannot be identified.

Chart 1:
Import to
Hungary and
Export from
Hungary
regarding
products on the
ML 1
(Source: EU
External Action,
licences. [ML1_Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12.7 mm \(calibre 0.50 inches\) or less and accessories, and specially designed components](https://webgate.ec.europa.eu/easqap/sense/app/75fd8e6e-68ac-42dd-a078-f616633118bb/sheet/24ca368fa36e-4cdb-94c6-00596b50c5ba/state/analysis, 15.9.2022.)</p>
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Conclusion

In summary, there are several overlaps in the context of Hungarian and EU laws with regard to ML1, which may require further consultation in order to be resolved.

On the one hand, such overlaps are reflected in the terms used, and on the other, they appear due to the lack of clarity as to the material competence of the authorities. The problems outlined above bring about a lack of uniformity in the case law with regard to the content of different laws. It is recommended that an appropriate application of the overlaps in the laws be standardized in such a manner that it is clear to each relevant authority which cases involve civilian use and which are of a military nature. Remedying most inconsistencies would ensure an effective application of the law, and it would resolve current anomalies and conflicts of laws by amending them accordingly, including, where appropriate, the relevant EU provisions.

A further solution to the contradictions outlined above is that the courts and the individual authorities – in particular the Government Office of the Capital City of Budapest Department of Trade, Defence Industry, Export Control and Precious Metal Assay – interpret individual laws in accordance with their preamble, i.e. the purpose of such laws, taking into account the relevant provisions of the Fundamental Law. This would enable them to classify weapons used for sporting and hunting

purposes as dual-use items in accordance with their intended purpose, and to establish appropriate procedures for such items.

Our proposal to address this is that the competent national government departments should issue an interpretation guide to EU and national law, clarifying the existing misunderstandings and providing an opportunity for the proper interpretation of the law and, through this, the development of satisfactory case law.

Bibliography

1. *Amendment of Certain Laws in the Areas of Industry and Trade Regulation and for the Purpose of Legal Harmonization Act LXXXIII of 2019.*
2. *Arms and Ammunitions Government Decree No. 253/2004 (VIII. 31).*
3. *Authorization of Foreign Trade of Dual-use Equipment Government Decree No. 13/2011 (II. 22).*
4. *Authorization of Manufacturing Military Equipment and of the Provision on Military Services Act CIX of 2005.*
5. *Authorization of the Export, Import, Transfer and Transit of Military Equipment and Services and on the Certification of Undertakings Government Decree No. 160/2011 (VIII. 18).*
6. *Case 4.Bf.15/2013.I (2013) of the Metropolitan Regional Court (in Hungarian: Fővárosi Ítéltábla).*
7. *Case B.1059/2007.30 (2007) of the Csongrád County Court (in Hungarian: Csongrád Megyei Bíróság).*
8. *Case B.255/2009.82 (2009) of the Metropolitan Court (in Hungarian: Fővárosi Bíróság)*
9. *Case Bhar.280/2018/6 (2018) of the Metropolitan Regional Court (in Hungarian: Fővárosi Ítéltábla).*
10. *Civil Code Act V of 2013.* https://njt.hu/translation/J2013T0005P_20210701_FIN.PDF
11. *COARM V2.* [80 | Sodobni vojaški izzivi/Contemporary Military Challenges](https://webgate.ec.europa.eu/easqap/sense/app/75fd8e6e-68ac-42dd-a078-f616633118bb/sheet/24ca368f-a36e-4cdb-94c6-00596b50c5ba/state/analysis>, 15 March 2022.
12. <i>Commerce Act CLXIV of 2005.</i>
13. <i>Commission v Kingdom of the Netherlands (1990) Case No. C-339/87. European Court Reports 1990 I-00851.</i>
14. <i>Consumer Protection Act CLV of 1997.</i>
15. <i>Council Common Position 2008/944/CFSP on defining common rules governing control of exports of military technology and equipment. Official Journal L335, pp 99–103.</i>
16. <i>Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons. Official Journal L256, pp 51–58.</i>
17. <i>Council Regulation No. 428/2009 on setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. Official Journal L134, pp 1–269.</i>
18. <i>Criminal Code Act C of 2012.</i>
19. <i>Czech Republic v Parliament and Council (2019) Case No. C-482/17. European Court Reports ECLI:EU:C:2019:1035.</i>

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20. *Designation of the Government Office of the Capital City of Budapest as the Authority Acting in Certain Industrial and Commercial Matters as well as on the Territorial Metrological and Technical Safety Authorities Government Decree of 365/2016 (XI. 29).*
21. *Detailed Rules for the Authorization of Military Activities and of the Certification of Undertakings Government Decree 156/2017 (VI. 16).*
22. *Deutsches Milch-Kontor GmbH v Hauptzollamt Hamburg-Jonas (2005) Case No. C-136/04. European Court Reports 2005 I-10095.*
23. *Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (2009). Official Journal L146, pp 1–36.*
24. *Fábián, L., 2015. Fegyverismereti vizsga – Felkészülési segédlet. Alpokalja Sportegyesület, Budapest*
25. *Firearms and Ammunitions Act XXIV of 2004.*
26. *Fundamental Law of Hungary 2011. https://njt.hu/translation/TheFundamentalLawofHungary_20201223_FINrev.pdf.*
27. *General Rules for Access to and Exercise of the Service Activity Act LXXVI of 2009. https://njt.hu/translation/J2012T0100P_20210708_FIN.pdf.*
28. *Legislation Act CXXX of 2020.*
29. *Market Surveillance of Products Act LXXXVIII of 2012.*
30. *Marking of Military Products and on the Registry of Military Products and Services Decree of the Ministry of Economics and Trade No. 32/2007 (III. 19).*
31. *Position of the Government Office of the Capital City of Budapest No. BP/15-HTO-Á/671-2/2018.*
32. *Position of the Ministry of Innovation and Technology No. IPFO/47377-2/2018/ITM.*
33. *Position of the Ministry of Innovation and Technology No. IPFO/67659-1-2018/ITM.*
34. *Position of the Ministry of the Interior No. BM/18631-6/2018.*
35. *Position of the National Police Headquarters No. 29000/29077-1/2018. ált.*
36. *Position of the National Police Headquarters No. 29000/30619-1/2018. ált.*
37. *Position of the Office of the Prosecutor General No. T.KvFE.2980/2018/1-I.*
38. *Report from the Commission to the European Parliament and the Council on the evaluation of Directive 2009/43/EC of the European Parliament and of the Council on simplifying terms and conditions of transfers of defence-related products within the Community, COM/2016/0760 final Tasks and Competences of the Members of the Government Government Decree No. 94/2018 (V. 22).*
39. *Zeman (2014) Case No. C543/12. European Court Reports ECLI:EU:C:2014:2143*

e-mail: dr.miskovics.mariann@gmail.com

e-mail: csaba.szabo3@bm.gov.hu

e-mail: dr.miskovics.mariann@gmail.com

Dr. Mariann Minkó-Miskovics je doktorirala in magistrirala na področju prava ter je neodvisna odvetnica, vpisana v imenik odvetnikov pri odvetniški zbornici v Budimpešti na Madžarskem, za področje varstva podatkov, prava gospodarskih družb in prava javnih naročil. Dr. Minkó-Miskovics je poleg odvetništva tudi samostojna raziskovalka na področju oboroženih kaznivih dejanj in kaznivih dejanj z uporabo orodja na Madžarskem, v Avstriji in Nemčiji ter obrambnih proizvodov na Madžarskem in v Evropski uniji.

Mariann Minkó-Miskovics, PhD, LL.M. is an independent attorney at law admitted to the Budapest Bar Association in Hungary with the working areas of data protection, corporate law, and public procurement law. Apart from acting as a lawyer, Dr Minkó-Miskovics is also an independent researcher whose research areas are armed crimes and crimes committed with tools in Hungary, Austria and Germany, and also defence-related products in Hungary and in the European Union.

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*Articles, published in the Contemporary Military Challenges do not reflect the official viewpoint of the Slovenian Armed Forces nor the bodies in which the authors of articles are employed.

e-mail: csaba.szabo3@bm.gov.hu

Izred. prof. dr. Szabó Csaba je višji svetnik, zaposlen kot svetovalec na madžarskem ministrstvu za notranje zadeve, in odgovorni urednik *Belügyi Szemle*, strokovne in znanstvene revije ministrstva za notranje zadeve. Predava na Fakulteti Deák Ferenc za pravne in politične znanosti na katedri za kriminologijo, Univerzi Széchenyi István v Győrju. Njegova raziskovalna področja vključujejo policijsko upravo, politike in upravljanje orožja na Madžarskem in v Evropski uniji. Dr. Szabó Csaba deluje tudi kot mentor pri doktoratih.

Assoc. Prof. Szabó Csaba, PhD, is a senior superintendent working as an adviser in the Ministry of the Interior of Hungary, and the responsible editor of the *Belügyi Szemle*, the professional and scientific periodical of the Ministry of the Interior; Associate Professor at Deák Ferenc Faculty of Law and Political Sciences, Department of Criminal Sciences, Széchenyi István University of Győr. His research areas are police administration, gun policies and administration in Hungary and in the European Union. Dr. Szabó Csaba also acts as a supervisor for doctorates

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