



# **The European Union Dual-Use Items Control Regime**

## **Comment of the Legislation Article-by-Article**

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## **Introductory Remarks**

To facilitate the understanding of the EU trade controls of dual-use items and technology, we have, in the present paper, the two documents that constitute the EU regime:

- Council Regulation (EC) No. 428/2009,
- Council Joint Action 2000/401/CFSP.

It should be kept in mind that the legal value of both documents is rather different. The Joint Action is an intergovernmental cooperation instrument set up by the Treaty on European Union (EU Treaty). To enter into force, it has to be transposed by Member States into their national legislations. The Council Regulation is the EU legislation instituted by the Treaty on the Functioning of the European Union (TFUE) and is therefore directly applicable.

The Dual-use Council Regulation (EC) No. 428/2009 has been substantially amended by Council Regulation (EC) No. 1232/2011 of the European Parliament and of the Council of 16 November 2011 *amending Council Regulation (EC) No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items* (*Official Journal* L 326/26, 08/12/2011) and by Regulation (EU) No. 599/2014 of the European Parliament and of the Council of 16 April 2014 *amending Council Regulation (EC) No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items* (*Official Journal* L 173/79, 12/06/2014).

A subsequent amendment to Regulation 428/2009 is Commission Delegated Regulation (EU) 2018/1922 of 10 October 2018 *amending Council Regulation (EC) No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items*, which amends Annexes I, IIa to IIg and IV (*Official Journal* L 319, 14/12/2018).

The last amendment to Regulation 428/2009 is Commission Delegated Regulation (EU) 2019/2199 of 30 December 2019 *amending Council Regulation (EC) No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items*, which amends Annexes I, IIa to IIg and IV (*Official Journal* L 338, 30/12/2019)<sup>1</sup>.

In order to simplify the recognition of amended articles, we have coloured in **green** provisions added or modified by Regulation 1232/2011 and in **red** provisions added or modified by Regulation 599/2014.

**New provisions of Regulation 1232/2011 concern essentially:**

- The establishment of five new EU General Export Authorisations (EU GEAs), now called “Union General Export Authorisations” (UGEAs);
- The reporting and review of regulation implementation by the Member States;
- The annual report to the Parliament;
- The international cooperation.

**New provisions added by Regulation 599/2014 concern essentially the power granted to the Commission to adopt delegated acts regarding the lists of items and countries covered by the DU Regulation.**

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<sup>1</sup> The majority of the changes to the EU Control List result from agreements reached by the Wassenaar Arrangement and the Missile Technology Control Regime.

## Introductory Remarks

### More specifically:

- A paragraph is added to article 15 allowing the Commission to update the list of dual-use items. Previously, the annual update was done by the Council and the European Parliament under the ordinary legislative procedure, which takes around a year;
- A sub-paragraph is added to Article 9(1) that gives the Commission the power to remove destinations from the scope of UGEAs, if such destinations become subject to an arms embargo;
- Article 23(a) and 23(b) are added to lay down the procedure for the Commission to adopt delegated acts and to allow the Council and the European Parliament to object, oppose or even revoke the delegated power.

It is worth it to notice that, on 28 September 2016, the European Commission presented a new proposal for the dual-use Regulation: *Proposal for a Regulation of the European Parliament and of the Council setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast)*, (Brussels, 28.9.2016 COM(2016) 616 final).<sup>2</sup> The new Regulation would strengthen the existing EU dual-use trade control regime, by broadening the “human security” dimension, in order to prevent human rights violations due to certain cyber-surveillance technologies.

The Commission’s proposal introduces new EU General Export Authorisations, simplified administrative procedures and the harmonisation of brokering controls, technical assistance and transit of dual-use items. Specific provisions to prevent the misuse of dual-use items in relation to terrorism would also be introduced by the new Regulation.

In January 2018, the Parliament published its report<sup>3</sup> on the proposal, agreeing on many of the changes proposed by the Commission, including on cyber-surveillance technology and on human rights, and focusing on reducing the administrative burden. It additionally proposed some new amendments, mainly to strengthen the protection of the right to privacy, data and the freedom of assembly, by adding clear-cut criteria and definitions to the Regulation. The Parliament’s report also called for the inclusion of new risks and technologies in the Regulation.

In June 2019, the Council’s position<sup>4</sup> was published, rejecting several elements proposed by the Commission, such as the definition of cyber-surveillance technology, the principle of an autonomous list for controlling cyber-surveillance technology and explicit references to human rights.

On 21 October 2019, the European Commission, Parliament and Council inaugurated a trilogue process<sup>5</sup> with the first official discussion on the modernisation of the dual-use Regulation. Future discussions are expected to focus mainly on cyber-surveillance technology, information sharing and the role of human rights. An agreement on the final text of the proposed recast is expected to be reached within 2020.<sup>6</sup>

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<sup>2</sup> The text of the Commission’s proposal is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0616>.

<sup>3</sup> The report on the proposal issued by the Parliament is available at: [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0006\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0006_EN.html).

<sup>4</sup> The text of the Council’s position is available at: <https://www.consilium.europa.eu/media/39555/mandate-for-negotiations.pdf>.

<sup>5</sup> More information on Tripartite Meetings (Trilogues) is available on the European Parliament’s website, at <https://www.europarl.europa.eu/ordinary-legislative-procedure/en/interinstitutional-negotiations.html>.

<sup>6</sup> To follow the most recent updates, it is recommended to visit the European Parliament Legislative Observatory’s website, available at [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2016/0295\(COD\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2016/0295(COD)).

## *Introductory Remarks*

The list of items (Annex I) to be controlled by Dual-use Council Regulation (EC) No. 428/2009 has been amended by:

- Council Regulation (EC) No. 388/2012 of the European Parliament and of the Council of 19 April 2012 *amending Council Regulation (EC) No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items* (OJ L 129/12, 16/05/2012);
- Commission Delegated Regulation (EU) No 1382/2014 of 22 October 2014 *amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items* (OJ L 371, 16/12/2014);
- Commission Delegated Regulation (EU) 2015/2420 of 12 October 2015 *amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual use items* (OJ L 340/1, 24/12/2015);
- Commission Delegated Regulation (EU) 2016/1969 of 12 September 2016 *amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items* (OJ L 307, 15/11/2016);
- Commission Delegated Regulation (EU) 2017/2268 of 26 September 2017 *amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items* (OJ L 334, 15/12/2017);
- Commission Delegated Regulation (EU) 2018/1922 of 10 October 2018 *amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items* (OJ L 319, 14/12/2018);
- Commission Delegated Regulation (EU) 2019/2199 of 30 December 2019 *amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items* (OJ L 338, 30/12/2019).<sup>7</sup>

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<sup>7</sup> The updated list is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R2199>.

## **Note on Brexit**

On 29 March 2017, the United Kingdom submitted its intention to withdraw from the European Union, as contemplated by Art. 50 of the Treaty on European Union.

After the Treaties cease to apply to the United Kingdom pursuant to Article 50(3) TEU, also Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items will no longer apply to the country<sup>8</sup>.

More specifically:

-With regard to exports from the United Kingdom to the European Union (and the Channel Islands), a new export licence issued by the UK will be necessary.

An Open General Export Licence (OGEL) guidance for exports of dual-use items from the UK to EU countries and the Channel Islands has been published by the Export Control Joint Unit (ECJU)<sup>9</sup>. It authorizes the export of items unless: (i)the exporter has been informed by the Secretary of State/is aware/has grounds for suspecting that they are or may be intended (a)for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons, or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons; (b)for use as parts or components of military items listed in the schedule 2 of the Export Control Order 2008<sup>10</sup> that have been exported from the United Kingdom without authorisation or in violation of an authorisation set out in the UK legislation; (ii)their destination is within a Customs Free Zone; (iii)their final destination is outside those listed in schedule 2<sup>11</sup> of the OGEL; (iv)the licence is suspended, revoked, expired<sup>12</sup>.

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<sup>8</sup> For more information about the withdrawal of the United Kingdom from the European Union and the subsequent changes to EU rules in the field of dual-use export controls, the European Commission's notice to stakeholders can be consulted at [http://www.esu.ulg.ac.be/file/20190321164757\\_dual-use-goods-en.pdf](http://www.esu.ulg.ac.be/file/20190321164757_dual-use-goods-en.pdf). Complementary information is available on the UK Government's website, at <https://www.gov.uk/guidance/exporting-controlled-goods-after-eu-exit>.

<sup>9</sup> The full text of the Open General Export Licence (OGEL) is available at <https://www.gov.uk/government/publications/open-general-export-licence-export-of-dual-use-items-to-eu-member-states>.

<sup>10</sup> The full list of the military goods, software and technology listed in Schedule 2 of the Export Control Order 2008 is available at <http://www.legislation.gov.uk/ukxi/2008/3231/schedule/2/made>.

<sup>11</sup> OGEL is valid for exports to the following destinations: (i)European Union Member States as follows: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden; (ii) The Channel Islands.

<sup>12</sup> Comparing the main principles governing OGEL and the main elements requested for a EU GEA, significant similarities can be detected. More specifically, among the general conditions applying to all EU GEAs are the following ones: (i) an exporter cannot use an EU GEA if he or she has been informed by the national authorities that the items in question are or may be intended, in their entirety or in part, for a use in connection with weapons of mass destruction or for a military end-use as defined in Article 4, or if he or she is aware that the items are intended for such use; (ii) an exporter cannot use an EU GEA when the relevant items are exported to a customs-free zone or free warehouse that is located in a destination covered by this authorisation

## *Introductory Remarks*

-With regard to export licences issued by the United Kingdom as a EU Member State under the Regulation, they will be no longer valid for exports of dual-use items from the EU to third countries and will require a licence issued by a competent authority of a EU Member State, as provided by Art. 9 of the Regulation.

-With regard to dual-use exports from the European Union to the United Kingdom, controls under the EU Regulation will apply to the United Kingdom as third country. Being the United Kingdom a party to relevant international treaties and a number of non-proliferation regimes, on 19 December 2018, the European Commission adopted a proposal for an amendment to the Regulation adding the United Kingdom to the list of destinations covered by EU General Authorisation (EU001)<sup>13</sup>. This proposal was adopted through Regulation (EU) No. 2019/496 of the European Council and of the Parliament of 27 March 2019 *amending Council Regulation (EC) No 428/2009 by granting a Union general export authorisation for the export of certain dual-use items from the Union to the United Kingdom (Official Journal L851/20, 27/3/2019)*<sup>14</sup>, with the aim to simplify the export of most dual-use items to the United Kingdom, ensuring at the same time a uniform application of controls throughout the European Union. It shall apply from the day following that on which the Treaties cease to apply to the United Kingdom pursuant to Article 50(3) TEU.

-With regard to intra-EU transfer licences, ruled by Art. 22 of the EU Regulation, the export of the items listed in Annex IV to the Regulation, and subject to intra-EU transfer controls, will be subject to authorisation as provided in the Regulation. However, intra-EU transfer licences issued by one of the 27 EU Member States for exports to the United Kingdom issued before the withdrawal date should be considered as valid until the licence validity expires.

<sup>13</sup> COM(2018) 891 final.

<sup>14</sup> The full text of the Regulation is available at <https://eur-lex.europa.eu/eli/reg/2019/496/oj>.

## Preamble

# Council Regulation (EC) No. 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items

Official Journal L 134, 29/05/2009 p. 0001 - 0269

## Preamble

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

### **Complementary information:**

Since the Lisbon Treaty has entered into force, Article 133 TEC was replaced and moved to Article 207 of the Treaty on the Functioning of the European Union. Provisions concerning the export policy were slightly changed, notably any **amendment** to the Regulation should henceforth be adopted through the ordinary legislative procedure, *i.e.* the co-decision. It extends the role of the European Parliament, which has to approve and not only to give its point of view during the consultation procedure, as it was previously the case.

Article 207 (ex Article 133 TEC)

*1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.*

*2. **The European Parliament and the Council**, acting by means of regulations in accordance with the **ordinary** legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy.*

Having regard to the proposal from the European Commission,

Whereas:

## *Preamble*

(1) Council Regulation (EC) No. 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology<sup>15</sup> has been significantly amended on several occasions. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) Dual-use items (including software and technology) should be subject to effective control when they are exported from the European Community.

(3) An effective common system of export controls on dual-use items is necessary to ensure that the international commitments and responsibilities of the Member States, especially regarding non-proliferation, and of the European Union (EU), are complied with.

(4) The existence of a common control system and harmonised policies for enforcement and monitoring in all Member States is a prerequisite for establishing the free movement of dual-use items inside the Community.

(5) The responsibility for deciding on individual, global or national general export authorisations, on authorisations for brokering services, on transits of non-Community dual-use items or on authorisations for the transfer within the Community of the dual-use items listed in Annex IV lies with national authorities. National provisions and decisions affecting exports of dual-use items must be taken in the framework of the common commercial policy, and in particular Council Regulation (EEC) No 2603/69 of 20 December 1969 establishing common rules for exports<sup>16</sup>.

### **Complementary information:**

The Council Regulation (EEC) 2603/69 has been repealed and replaced by the Council Regulation (EC) No. 1061/2009 of 19 October 2009 establishing common rules for exports (OJ L 291, 07/11/2009) and by Council Regulation (EU) 37/2014 of the European Parliament and of the Council of 15 January 2014 (OJ L 18, 21/1/2014). Lastly, it has been codified by Regulation 2015/479 of the European Parliament and of the Council of 11 March 2015 on common rules for exports (OJ L 83/34, 27/03/2015).

(6) Decisions to update the common list of dual-use items subject to export controls must be in conformity with the obligations and commitments that Member States have accepted as members of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties.

**Comment:** The initial text of this Regulation was adopted at a time (1994) when all EU Member States were members of the five relevant international trade control regimes. Since the 2004 enlargement, the situation has changed and some of them are not members of certain export control regimes. The current membership is the following:

- Regarding nuclear items:
  - o All EU Member States are members of the Nuclear Suppliers Group;
  - o Cyprus, Estonia, Latvia, Lithuania, Malta have applied for a membership in the Zangger Committee or their intentions are not yet known.
- Regarding chemicals and biological items:
  - o All EU Member States are members of the Australia Group and of the

<sup>15</sup> OJ L 159, 30.6.2000, p. 1.

<sup>16</sup> OJ L 324, 27.12.1969, p. 25.

## Preamble

### Chemical Weapons Convention.

- Regarding missiles technology:
  - o Croatia, Cyprus, Estonia, Latvia, Lithuania, Malta, Slovenia, Slovakia and Romania have applied for a membership in the Missile Technology Control Regime (MTCR).
- Regarding the Wassenaar Arrangement (nuclear, biological, chemical items):
  - o All EU Member States are members of the Wassenaar Arrangement apart from Cyprus, which has applied thereto.

The participation of all EU Member States in all the regimes is a major challenge for ensuring the efficiency of the EU trade control framework. Considering that transfers of dual-use items between Member States are, in principle, not submitted to authorisation (implementation of the internal market), the efficiency of the EU trade control regime could only be guaranteed if all Member States were bound by the same international trade control commitments. One of the main difficulties is for Member States not Parties to an international export control regime to access the information shared between participating States of such regime.

(7) Common lists of dual-use items, destinations and guidelines are essential elements for an effective export control regime.

(8) Transmission of software and technology by means of electronic media, fax or telephone to destinations outside the Community should also be controlled.

(9) Particular attention needs to be paid to issues of re-export and end-use.

(10) On 22 September 1998 representatives of the Member States and the European Commission signed additional Protocols to the respective safeguards agreements between the Member States, the European Atomic Energy Community and the International Atomic Energy Agency, which, among other measures, oblige the Member States to provide information on transfers of specified equipment and non-nuclear material.

### **Complementary information:**

The text of the different additional protocols to safeguards agreements (modelled on INFCIRC/540) can be found on the IAEA website.

For Member States considered as non-nuclear-weapon States by the nuclear Non-Proliferation Treaty, the agreement is published by the IAEA under INFCIRC193/add.1 to add.7 for Member States having joined the EU after 1980 and before 1995 and INFCIRC193/add. 8 to add.28 for Member States having joined the EU after 1995.

For France and the United Kingdom, the safeguards agreement and its additional protocol are published respectively under [INFCIRC263](#), [INFCIRC263/add.1](#) and [INFCIRC290](#) and [INFCIRC/290/add.1](#).

During their accession process, the new Member States have to replace their bilateral safeguards agreements signed with the IAEA with a trilateral agreement signed with the IAEA and Euratom. Such rather technical process, taking place after their accession, can be lengthy.

## *Preamble*

(11) The Community has adopted a body of customs rules, contained in Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code<sup>17</sup> (hereinafter: the Community Customs Code) and Commission Regulation (EEC) No 2454/93<sup>18</sup> implementing Regulation (EEC) No 2913/92, which lay down, among other things, provisions relating to the export and re-export of goods. Nothing in this Regulation constrains any powers under and pursuant to the Community Customs Code and its implementing provisions.

(12) Pursuant to and within the limits of Article 30 of the Treaty and pending a greater degree of harmonisation, Member States retain the right to carry out controls on transfers of certain dual-use items within the Community in order to safeguard public policy or public security. Where these controls are linked to the effectiveness of controls on exports from the Community, they should be periodically reviewed by the Council.

**Comment:** Regularly, proposals have been tabled to review and reduce the number of dual-use items to be controlled within the European Union. Nevertheless, the required majority among Member States could not be reached. Since the entry into force of the Lisbon Treaty, no proposal has been tabled so far under the co-decision legislative procedure.

(13) In order to ensure that this Regulation is properly applied, each Member State should take measures giving the competent authorities appropriate powers.

(14) The Heads of State or Government of the EU adopted in June 2003 an Action Plan on Non-Proliferation of Weapons of Mass Destruction (Thessaloniki Action Plan). This Action Plan was complemented by the EU Strategy against proliferation of Weapons of Mass Destruction adopted by the European Council on 12 December 2003 (EU WMD Strategy). According to Chapter III of this Strategy, the European Union must make use of all its instruments to prevent, deter, halt, and if possible eliminate proliferation programmes that cause concern at global level. Subparagraph 30A(4) of that Chapter specifically refers to strengthening export control policies and practices.

(15) United Nations Security Council Resolution 1540, adopted on 28 April 2004, decides that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery, including by establishing appropriate controls over related materials, and to this end shall, among others, establish transit and brokering controls. Related materials are materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery.

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<sup>17</sup> OJ L 302, 19/10/1991, p. 1. Regulation as last amended by Regulation (EC) No 955/1999 of the European Parliament and of the Council (OJ L 119, 7/5/1999, p. 1). At the 3 September 2008 meeting of the DUWP the CLS drew attention to the entry into force on 24 June 2008 of the “Modernised Customs Code” (Regulation (EC) No 450/2008 of the European Parliament and the Council of 23 April 2008), by which Regulation (EC) No 2913/92 is repealed. On 9 October 2013, the Union Customs Code (UCC) was adopted as Regulation (EU) No. 952/2013 of the European Parliament and of the Council. It entered into force on 30/10/2013 and repealed the Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (the Modernised Customs Code). Its substantive provisions apply since 1 May 2016.

<sup>18</sup> OJ L 253, 11/10/1993, p. 1. Regulation as last amended by Regulation (EC) No. 1662/1999 (OJ L 197, 29/7/1999, p. 25).

## Preamble

### **Additional information:**

Until June 2012, brokering activities of dual-use items were not ruled by international export control regimes. The Australia Group was the first regime to insert in its Guidelines dedicated provisions: *“AG members should have in place or establish measures against illicit activities that allow them to act upon brokering services related to items mentioned in the AG control lists which could contribute to CBW activities. AG members will make every effort to implement those measures in accordance with their domestic legal framework and practices”*.

The proposal to amend the Regulation, presented by the Commission, to insert a new Article 5, was based on the UNSCR 1540 Paragraph 3c, which focuses on the fight against illicit brokering. Therefore, the Regulation does not submit to authorisation, like it is the case for export of dual-use items, all related transactions, but only those that present a risk of diversion.

(16) This Regulation includes items which only pass through the territory of the Community, that is those items which are not assigned a customs-approved treatment or use other than the external transit procedure or which are merely placed in a free zone or free warehouse and where no record of them has to be kept in an approved stock record. Accordingly, a possibility for Member States' authorities to prohibit on a case-by-case basis the transit of non-Community dual-use items should be established, where they have reasonable grounds for suspecting from intelligence or other sources that the items are or may be intended in their entirety or in part for proliferation of weapons of mass destruction or of their means of delivery.

(17) Controls should also be introduced on the provision of brokering services when the broker has been informed by competent national authorities or is aware that such provision might lead to production or delivery of weapons of mass destruction in a third country.

### **Comment:**

UN Security Council Resolution 1540 urges States to adopt adequate national controls to *“prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials”*. The Resolution calls for the control of *“materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery”*. Such definition covers partly the dual-use items as defined by Article 2(1) of this Regulation. Accordingly, dual-use items are **items that can be used for both civil and military purposes including WMD and conventional weapons**.

Nevertheless, as for implementing the UN Resolution, the Regulation has included dedicated provisions on transit (Article 6) and on brokering (Article 5) of dual-use items as defined by Article 2(1). This indirectly extends its scope as required by the 1540 UNSCR, presently limited to WMD dual-use items.

(18) It is desirable to achieve a uniform and consistent application of controls throughout the EU in order to promote EU and international security and to provide a level-playing field for EU exporters. It is therefore appropriate, in accordance with the recommendations of the Thessaloniki Action Plan and the calls of the EU WMD Strategy, to broaden the scope of consultation between Member States prior to granting an export authorisation. Among the benefits of this approach there would be, for example, an assurance that a Member State's

## Preamble

essential security interests would not be threatened by an export from another Member State. Greater convergence of conditions implementing national controls on dual-use items not listed in this Regulation and harmonisation of the conditions of use of the different types of authorisations that may be granted under this Regulation would bring about more uniform and consistent application of controls. Improving the definition of intangible transfers of technology, to include making controlled technology available to persons located outside the EU, would assist in the effort to promote security, as would further an alignment of the modalities for exchanging sensitive information among Member States with those of the international export control regimes, in particular by providing for the possibility of establishing a secure electronic system for sharing information among Member States.

### **Complementary information:**

Sub-paragraph 30(A) of the Action Plan concerns the strengthening of trade control policies and practices in co-ordination with partners in the export control regimes. It invokes the necessity of making the EU a leading co-operative player in the export control regimes by:

- **Co-ordinating EU positions** within the different regimes;
- Supporting the membership of acceding countries and, where appropriate, involvement of the Commission;
- Promoting a **catch-all clause** in the regimes, where it was not agreed so far, as well as strengthening the information exchange, in particular with respect to sensitive destinations, sensitive end-users and procurement patterns;
- Reinforcing the efficiency of export control in an enlarged Europe, and successfully conducting a peer review to disseminate good practices by taking special account of the challenges of the forthcoming enlargement;
- Setting up a **programme of assistance** for States in need of technical knowledge in the field of export control;
- Working to ensure that the Nuclear Suppliers Group makes the export of controlled nuclear and nuclear-related items and technology conditional on ratifying and implementing the **Additional Protocol**;
- Promoting in the regimes reinforced export controls with respect to intangible transfers of dual-use technology, as well as effective measures relating to **brokering** and **transshipment** issues;
- Enhancing **information exchange** between Member States. Considering exchange of information between the EU IntCen and like-minded countries.

(19) Each Member State should determine effective, proportionate and dissuasive penalties applicable in the event of breach of the provisions of this Regulation.

## THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission, acting in accordance with the ordinary legislative procedure,

Whereas:

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1. Council Regulation (EC) No. 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items requires dual-use items (including software and technology) to be subject to effective control when they are exported from or transit through the Union, or are delivered to a third country as a result of brokering services provided by a broker resident or established in the Union.

2. It is desirable to achieve uniform and consistent application of controls throughout the Union in order to avoid unfair competition among Union exporters, harmonise the scope of Union General Export Authorisations and conditions of their use among Union exporters and ensure efficiency and effectiveness of the security controls in the Union.

3. In its communication of 18 December 2006, the Commission put forward the idea of the creation of new Union General Export Authorisations in a bid to enhance the industry's competitiveness and establish a level playing field for all Union exporters when they export certain specific dual-use items to certain specific destinations while at the same time ensuring a high level of security and full compliance with international obligations.

4. Regulation (EC) No. 428/2009 repealed Council Regulation (EC) No. 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology with effect from 27 August 2009. However, the relevant provisions of Regulation (EC) No. 1334/2000 continue to apply for export authorisation applications made before that date.

5. In order to create new Union General Export Authorisations for the export of certain specific dual-use items to certain specific destinations, the relevant provisions of Regulation (EC) No. 428/2009 need to be amended by adding new Annexes thereto.

6. The competent authorities of the Member State where the exporter is established should be provided with the possibility of prohibiting the use of the Union General Export Authorisations under the conditions set out in Regulation (EC) No. 428/2009 as amended by this Regulation.

7. Since the entry into force of the Treaty of Lisbon, arms embargoes under the Union's common foreign and security policy are adopted by Council decisions. Pursuant to Article 9 of the Protocol (No. 36) on transitional provisions, the legal effects of common positions adopted by the Council under Title V of the Treaty on European Union prior to the entry into force of the Treaty of Lisbon are to be preserved until they are repealed, annulled or amended in implementation of the Treaties.

8. Regulation (EC) No. 428/2009 should therefore be amended accordingly,

*Preamble*

HAVE ADOPTED THIS REGULATION:

## CHAPTER I SUBJECT AND DEFINITIONS

### Article 1

This Regulation sets up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.

#### **Comment:**

As mentioned in Recital 4 “*the existence of a common control system and harmonised policies for enforcement and monitoring in all Member States was a prerequisite for establishing the free movement of dual-use items inside the Community*”. Nevertheless, this Regulation does not substitute for the Member States’ national trade control regimes in a centralised EU trade control framework. In fact, this Regulation establishes common trade control rules and principles to be implemented by each Member State. It consists mostly in the adoption of:

- An identical list of items to be controlled (see articles 3 and 15(1));
- A system of export authorisations for listed and non-listed items (see articles 3 and 4);
- A possibility to control the brokering activities (see Article 5);
- A possibility to control the transit of dual-use items (see Article 6);
- A transfer authorisation for movements of certain items between EU Member States (see Article 22).

This Regulation establishes the principle that an authorisation is granted:

- By the competent authority of the Member State where the exporter is established; or
- Directly by this Regulation as regards the six EU General Export Authorisations (see Article 9).

This Regulation covers **exports** of dual-use items (see Article 1(2)), but it does not concern **import** of such items. Nevertheless, Member States have the possibility to adopt, *via* their national legislation, special provisions on import of dual-use items.

It is the case of **Poland**, which requires an import authorisation for certain chemical items and requests a reporting/notification to the counter-intelligence agency of every import of cryptological items.

**Finland** has also dedicated provisions requiring a licence for import of:

- Nuclear materials (dual use category 0C001- 0C004);
- Nuclear waste;
- Nuclear devices and equipment (0A001, 0B001- 0B007);
- Nuclear information (software and technology, 0D001 & 0E001), if a particular safeguard obligation is binding on such nuclear information;
- Uranium and thorium ore.

The Nuclear Energy Act and Nuclear Energy Degree are available on the webpage of the Finnish Radiation and Nuclear Safety Authority (STUK).

The **transfer** of dual-use items shall be understood as a movement of items within the customs territory of the European Union. The Regulation organises the control of transfers for

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specific categories of items (see Article 22).

The control of **brokering services**, defined as any activity facilitating the trade of listed and non-listed dual-use items, between two third-countries, can also be submitted to national authorisation (see Article 5).

The control of **transit** of dual-use items can be prohibited or submitted to national authorisation (see Article 6).

The **transshipment** of dual-use items is not covered by the Regulation.

## Article 2

For the purposes of this Regulation:

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;

### **Comment: Definition of dual-use “items”**

The definition of dual-use items, used by this Regulation, attempts to mix together two different understandings of the term: the distinction between military/non-military purposes (*i.e.* the Wassenaar Arrangement, Australia Group and MTCR definitions) and the distinction between nuclear/non-nuclear purposes (*i.e.* the NSG definition).

The Regulation makes no distinction between **used and new items**. Both are covered (see the General Note 3 to Annex 1).

**Comment:** Dual-use items covered by this Regulation are listed in Annex I. This control list is **comprehensive and compulsory for Member States’** licencing authorities. It does not leave room for national appreciation or interpretation if an item shall be or not submitted to authorisation.

Nevertheless, if a dual-use item is not listed in Annex I, this does not necessarily mean that it does not need an export, transit or brokering authorisation. Such authorisation can be required by a national export control list or can result from the implementation of a “catch-all” clause (see articles 4, 5, 6 and 8).

### **Comment: Understanding of the term “technology” by the Member States**

If technology in the public domain and basic scientific research is not covered by this Regulation (see below), it seems that, for some Member States, industries do not conduct basic research because the aim thereof is always to develop a marketable product and, consequently, the industry will not publish its results unrestrictedly. Thus, for such Member States, any export of technology has to be submitted to authorisation without considering if it is a technology stemming from the public domain or basic scientific research.

The understanding of the term and its exceptions are controversial especially concerning university research activities. Academic research activities and, in particular, fundamental research consists in experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct practical application or use in view. Hence, potential end-uses will be almost impossible to assess during the research, as long as applications do not constitute an objective for the researcher. Only when results will be published and debated within the scientific community, potential applications and potential WMD uses might emerge and be developed. Facing the difficulty to evaluate the WMD proliferation risks of fundamental research, certain export control authorities have thought to constraint universities to submit scientific contributions to risk assessment before publication. The challenge, considering the amount of scientific publications to review, appeared to be not realistic and focusing only on pre-identified sensitive fields of research, like nuclear physics or research programs using

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controlled technology, would have been useless. These research programs are already submitted to trade control rules as long as they are using controlled equipment and technology. Therefore, the objective to detect proliferation risk of research programs, not involved in a sensitive sector or not using listed items, could not be easily achieved.

### **Comment: Technology not covered by this Regulation**

The General Technology Note, the Nuclear Technology Note and the General Software Note of Annex I of this Regulation exempt from export authorisation any technology which derives from the public domain and is necessary for the basic scientific research or constitutes the minimum necessary for patent application.

**Public domain** should be understood as a technology available **without any restrictions upon further dissemination** (copyright does not remove technology from the public domain).

**Basic scientific research** means **experimental or theoretical work** undertaken principally to acquire new knowledge of the fundamental principles and of phenomena or observable facts, not primarily directed towards a specific practical aim or objective.

An **authorisation covers the minimum technology** necessary for the installation, operation, maintenance and repair of the items supplied. It provides operating instructions and some basic specifications. An everyday example would be the type of technical manual supplied with a television or washing machine.

**Technology normally not included** in the export authorisation is:

- The technology required to develop a complete system if the items exported are only components of that system;
- The technology related to a previous authorisation, but not essentially different from the technology that was originally supplied (handbooks or publications relating to equipment that has been upgraded since its original supply).

2. “**Export**” shall mean:

- (i) an export procedure within the meaning of Article 161 of Regulation (EEC) No 2913/92 (the Community Customs Code);

### **Comment:**

This Regulation does not establish specific provisions for “temporary export” of dual-use items. Temporary exports concern transfers of controlled items for a fair or an exhibition that afterwards would be re-imported to the EU without any changes. Such transfer should normally be submitted to the standard export control rules, unless it is covered, for certain countries, by the EU General Export Authorisation (GEA) 004.

### **Complementary information:**

The legal basis of the EU customs territory is:

- Article 355 and Annex II of the TFEU;
- Article 3 of the Community Customs Code<sup>19</sup> as well as a number of other definitions found in the Community Customs Code.

It should be emphasised that the Community Customs Code has been repealed by the Union Custom Code (Regulation (EU) 952/2013 of the European and of the Council OJ L 269, 10/10/2013). Its substantive provisions apply since 1 May 2016.

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<sup>19</sup> This provision is replaced by article 4 of the UCC.

## Article 2

### **Community Customs Code:**

**Article 3<sup>20</sup>**<sup>1</sup>. The customs territory of the Community shall comprise:

- *The territory of the Kingdom of Belgium,*
- *The territory of the Kingdom of Denmark, except the Faroe Islands and Greenland,*
- *The territory of the Federal Republic of Germany, except the Island of Heligoland and the territory of Büsingen (Treaty of 23 November 1964 between the Federal Republic of Germany and the Swiss Confederation),*
- *The territory of the Hellenic Republic,*
- *The territory of the Kingdom of Spain, except Ceuta and Melilla,*
- *The territory of the French Republic, except the overseas territories and Saint-Pierre and Miquelon*
- *The territory of Ireland,*
- *The territory of the Italian Republic, except the municipalities of Livigno and Campione d'Italia and the national waters of Lake Lugano which are between the bank and the political frontier of the area between Ponte Tresa and Porto Ceresio,*
- *The territory of the Grand Duchy of Luxembourg,*
- *The territory of the Kingdom of the Netherlands in Europe,*
- *The territory of the Republic of Austria,*
- *The territory of the Portuguese Republic,*
- *The territory of the Republic of Finland,*
- *The territory of the Kingdom of Sweden,*
- *The territory of the United Kingdom of Great Britain and Northern Ireland and of the Channel Islands and the Isle of Man<sup>21</sup>,*
- *The territory of the Czech Republic,*
- *The territory of the Republic of Estonia,*
- *The territory of the Republic of Cyprus,*
- *The territory of the Republic of Latvia,*
- *The territory of the Republic of Lithuania,*
- *The territory of the Republic of Hungary,*
- *The territory of the Republic of Malta,*
- *The territory of the Republic of Poland,*
- *The territory of the Republic of Slovenia,*
- *The territory of the Slovak Republic,*
- *The territory of the Republic of Bulgaria*
- *The territory of Romania*
- *The territory of Croatia*

2. *The following territories situated outside the territory of the Member States shall, taking the conventions and treaties applicable to them into account, be considered to be part of the customs territory of the Union:*

*(a) FRANCE*

*The territory of the principality of Monaco as defined in the Customs Convention signed in Paris on 18 May 1963 (Official Journal of the French Republic of 27 September 1963, p. 8679)*

*(b) CYPRUS*

*The territory of the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia as*

<sup>20</sup> This provision is replaced by article 4 of the UCC.

<sup>21</sup> This provision may be subject to changes after the EU Treaties cease to apply to the United Kingdom, as a consequence of Brexit.

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*defined in the Treaty concerning the Establishment of the Republic of Cyprus, signed in Nicosia on 16 August 1960 (United Kingdom Treaty Series No 4 (1961) Cmnd. 1252).*

*3. The customs territory of the Union shall include the territorial waters, the inland maritime waters and the airspace of the Member States, and the territories referred to in paragraph 2, except for the territorial waters, the inland maritime waters and the airspace of those territories which are not part of the customs territory of the Community pursuant to paragraph 1”.*

**Article 161<sup>22</sup>** *“1. The export procedure shall allow Community goods to leave the customs territory of the Community. Exportation shall entail the application of exit formalities including commercial policy measures and, where appropriate, export duties.*

*2. With the exception of goods placed under the outward processing procedure or a transit procedure pursuant to Article 163, and without prejudice to Article 164, all Community goods intended for export shall be placed under the export procedure.*

*3. Goods dispatched to Heligoland shall not be considered to be exports from the customs territory of the Community.*

*4. The case in which and the conditions under which goods leaving the customs territory of the Community are not subject to an export declaration shall be determined in accordance with the committee procedure.*

*5. The export declaration must be lodged at the customs office responsible for supervising the place where the exporter is established or where the goods are packed or loaded for export shipment. Derogations shall be determined in accordance with the committee procedure.”*

(ii) a re-export within the meaning of Article 182 of that Code but not including items in transit and

### **Complementary information: Community Customs Code<sup>23</sup> Article 182**

*“1. Non-Community goods may be:*

- Re-exported from the customs territory of the Community;*
- Destroyed;*

*- Abandoned to the exchequer where national legislation makes provision to that effect.*

*2. Re-exportation shall, where appropriate, involve application of the formalities laid down for goods leaving, including commercial policy measures.*

*Cases in which non-Community goods may be placed under a suspensive arrangement with a view to non-application of commercial policy measures on exportation may be determined in accordance with the committee procedure.*

*3. Save in cases determined in accordance with the committee procedure, destruction shall be the subject of prior notification of the customs authorities. The customs authorities shall prohibit re-exportation should the formalities or measures referred to in the first subparagraph of paragraph 2 so provide. Where goods placed under an economic customs*

<sup>22</sup> Council Regulation (EEC) No. 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19/10/1992, p. 1). This Article becomes the Articles 176, 177 and 178 of the modernised Customs Code. The Title VIII Goods taken out of the custom territory of the Union Custom Code includes the previous provisions of article 162.

<sup>23</sup> Council Regulation (EEC) No. 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19/10/1992, p. 1). This Article becomes Articles 127, 168 and 179 of the modernised Customs Code. The Title VIII Goods taken out of the custom territory of the Union Custom Code includes the previous provisions of article 182.

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*procedure when on Community customs territory are intended for re-exportation, a customs declaration within the meaning of Articles 59 to 78 shall be lodged. In such cases, Article 161(4) and (5) shall apply.*

*Abandonment shall be put into effect in accordance with national provisions.*

*4. Destruction or abandonment shall not entail any expense for the exchequer.*

*5. Any waste or scrap resulting from destruction shall be assigned a customs-approved treatment or use prescribed for non-Community goods.*

*It shall remain under customs supervision until the time laid down in Article 37(2).”*

(iii) transmission of software or technology by electronic media, including by fax, telephone, electronic mail or any other electronic means to a destination outside the European Community; it includes making available in an electronic form such software and technology to legal and natural persons and partnerships outside the Community. Export also applies to oral transmission of technology when the technology is described over the telephone;

**Comment: Basic principles regarding the export control of software and technology by intangible means of transfer (usually designed by the acronym ITT - intangible technology transfers).**

The basic principle applicable to controls of intangible transfers of technology is that the “online” world should be controlled in the same proportionate manner as the “offline” world (*i.e.* when a controlled technology is sent in the form of a CD-Rom **by post** to a third country it is subject to authorisation. Therefore, if the same controlled information (as the information contained in the CD-Rom) is sent by **e-mail**, it shall **also be controlled**).

It should be noted that the European Union’s general export authorisation EU 001 covers also ITT to Australia, Canada, United States of America, Japan, Norway, New Zealand and Switzerland<sup>24</sup> (see comment under Article 4a of the Joint Action). Such extension is not presently applicable for the other EU GEA (Annex IIb to g).

Some EU Member States grant **global** licences for ITT. Details on national provisions of the Member States are listed under Article 3.1.

The main difficulty that occurs, while controlling intangible transfers, is that border controls by customs authorities are impossible due to the nature of these transfers. Therefore, in order to ensure compliance with export control regulations, national authorities can conduct various audits of companies and institutions or intercept telecommunications to detect illegal transfers of software and technology.

**Movement of natural persons:**

The transfer of technology through cross-border movement of natural persons is **not covered by this Regulation** (Article 7) but it is **partly** covered by the **Joint Action CFSP/401/2000**. See comment related to Article 1 of the Joint Action.

It should be noted that neither this Regulation nor the Joint Action cover ITT made through the movement of **foreign citizens into the EU** (third-country citizens following courses at

<sup>24</sup> Since the entry into force of Regulation (EU) 2019/496 of the European Parliament and of the Council of 25 March 2019 amending Council Regulation (EC) No 428/2009 by granting a Union general export authorisation for the export of certain dual-use items from the Union to the United Kingdom (OJ L1 85/20 of 27/03/2019) the United Kingdom of Great Britain and Northern Ireland are added to the list of beneficiaries of the EU General Export Authorisation 001.

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universities, research centres or participating in industry research and development programs in the EU). Nevertheless, it does not mean that such ITT (called “deemed export” in the United States export control system) are beyond any control. They could be ruled by other policies, such as visa policies or national security objectives, outside the scope of this Regulation.

### Web server

The question of which technology could be **installed on and downloaded from** a web server has been controversial, mainly due to the difficulty to define precisely the location of the server. Nevertheless, the new provisions added in 2008 have included the transfer control of EU technology through a web server established outside of the EU. Therefore, such transaction shall be in principle submitted to authorisation, even if it remains unclear how Member States’ export control authorities would implement it.

### Intranet

Making technology accessible on a company’s intranet constitutes an electronic transfer. An authorisation will be necessary if such technology is accessible to employees of the company situated **outside** the EU. Moreover, if the company’s employees have access to controlled technology through intranet while travelling outside the EU, such access should also be submitted to authorisation even if an employee has no intention to pass the technology to another person abroad.

### Accessing emails and taking laptop overseas

In principle access to email and reading documents containing controlled technology abroad will be considered as an export and will require an authorisation. But, what should the recipient do with emails he/she did not ask for, when the sender has no idea that the recipient was out of the country? Moreover, when the recipient will go back home with his laptop containing controlled information, he might have to ask again for an authorisation for (re)exporting technology that he/she has involuntarily received.

To face such situation, some Member States grant general/global authorisations to exporters.

3. “**Exporter**” shall mean any natural or legal person or partnership:

(i) 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 the Community. If no export contract has been concluded or if the holder of the contract does not act on its own behalf, the exporter shall mean the person who has the power for determining the sending of the item out of the customs territory of the Community;

(ii) which decides to transmit or make available software or technology by electronic media including by fax, telephone, electronic mail or by any other electronic means to a destination outside the Community.

### Comment:

The term consignee has to be understood as the **first recipient** of items in the country of final destination. This may be where the export remains (in which case the consignee will be the end-user), but not necessarily. The consignee can be an authorised distributor, associated company, agent or anyone else.

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Where the benefit of a right to dispose of the dual-use item belongs to a person established outside the Community pursuant to the contract on which the export is based, the exporter shall be considered to be the contracting party established in the Community.

### **Comment:**

The term exporter is used only for the transfer of dual-use items to a third country and not for the movement of items within the EU customs territory. See also comment on Article 22.

4. “**Export declaration**” shall mean the act whereby a person indicates in the prescribed form and manner the wish to place dual-use items under an export procedure;

5. “**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; or
- the selling or buying of dual-use items that are located in third countries for their transfer to another third country.

For the purposes of this Regulation the sole provision of ancillary services is excluded from this definition. Ancillary services are transportation, financial services, insurance or re-insurance, or general advertising or promotion;

### **Comment:**

Generally speaking, the exclusion of ancillary services from the scope of brokering services can be considered as a loophole of the Regulation. As concerns EU law, ancillary services are regularly covered by Council decisions implementing resolutions of the UN Security Council on restrictive measures against third countries. These provisions do not explicitly include nor exclude brokering activities related to ancillary services. The Council uses more vague wording and speaks about “direct or indirect” supply of controlled items. As long as brokering activities consist in an indirect supply of items, including transport and financial services, brokering of ancillary services could be considered as covered by these specific Council decisions, such as the Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria<sup>25</sup>, Article 1.2: “*it shall not apply to:*

*a) Provide, directly or indirectly, technical assistance, brokering services or other services related to the items referred to in paragraph 1 or related to the provision, manufacture, maintenance and use of such items, to any natural or legal person, entity or body in, or for use in, Syria;*

*b) Provide, directly or indirectly, financing or financial assistance related to the items referred to in paragraph 1, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items, or for the provision of related technical assistance, brokering services or other services to any natural or legal person, entity or body in, or for use in, Syria;*

*c) Participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibitions referred to in points (a) or (b).”*

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<sup>25</sup> Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria (OJ L 121, 10/05/2011, p. 11).

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6. “**Broker**” shall mean any natural or legal person or partnership resident or established in a Member State of the Community that carries out services defined under point 5 from the Community into the territory of a third country;

**Comment:**

Brokering services carried out by an EU broker (established in or resident of the EU) when he/she is travelling outside of the EU and if the transaction is not accounted in the EU will not be ruled by this Regulation.

Nevertheless, some Member States can introduce specific provisions covering services that occur outside the European Union. **The Netherlands’** legislation, for instance, provides a distinct definition.

7. “**Transit**” shall mean a transport of non-Community dual-use items entering and passing through the customs territory of the Community with a destination outside the Community;

**Comment:**

Due to the principle of free movement of goods and technology within the European Union, a transfer of dual-use items between two Member States, passing through a third one, will not be considered as a transit operation under this Regulation.

Dedicated provisions to the control of transit have been introduced in 2009 and several issues still need to be implemented by the Member States and require further harmonisation.

The control of transit operations requires a close collaboration between the licencing and the customs authorities. Hence, the first practical difficulty stems from the fact that the definition used by licencing authorities (Article 2(7) of Regulation 428/2009) is different from that used by customs (Article 91 of Community Customs Code (CCC))<sup>26</sup>. Moreover, the definition of “transit” used by this Regulation does not necessarily match with the one applied by the national legislation of certain Member States. As for certain Benelux countries (the **Netherlands** and **Luxembourg**) transit means a transport of non-Community goods entering and passing through the customs territory of the European Community, if the items will have to change means of transport on the Benelux territory (carry out and/or carry in another means of transportation which could be the same plane, boat or truck). Regarding the implementation of this Regulation, this difference does not have direct consequences (see Article 3).

**Belgium (Flemish Region):** Art. 1, 3° of the Decision of the Flemish Government of 14 March 2014 refers directly to Art. 2, 7° of Regulation 428/2009.

The extensive wording of Article 2(7) has predisposed Member States to apply a transit procedure to the following scenarios:

- Items remain on board;
- Items are unloaded;
- Transshipment;
- Means of transport are to be changed.

However, a handling of transactions that involve a change of destination appears to be subject to different interpretations. Whereas some Member States consider a change of destination as

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<sup>26</sup> This provision is replaced by article 226 of the UCC.

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a switch to an export procedure, others continue to apply transit provisions as long as the final destination is a third country.

From the practical point of view, according to Article 37 CCC<sup>27</sup> every transit of dual-use items may be subject to customs controls. In order to identify suspicious transactions, customs authorities undertake various risk management activities (Article 4 CCC)<sup>28</sup>, supervise the summary declarations (Article 36a CCC<sup>29</sup> as implemented by Article 30A of Consolidated implementing provisions), etc. When a suspicious transaction is blocked, a licensing authority has three possibilities:

- 1) Prohibit the transfer: in this case, it is important to know to whom the prohibition is addressed. According to Article 182(d)(3) CCC<sup>30</sup>, some Member States address it to the person responsible for the carriage, *i.e.* the person who brings the goods or any person who is able to present the goods to the competent customs authority.
- 2) Require a licence: in this case, it is essential to know who should apply for the licence. Some Member States refer to the exporter established in the third country, who is invited to solicit an EU legal representative.
- 3) Decide that the transfer will not be subject to any additional controls.

A prohibition of a transfer is a lengthy procedure, which should not be limited by any kind of time frame in order to allow the licensing and customs authorities proceeding with all necessary controls and assessments. Currently, there is no common approach as regards the financial charges' responsibility. Some Member States address these costs to the person responsible for the carriage, *i.e.* the person who brings the goods or any person who is able to present the goods to the competent customs authority (Article 182(d)(3) CCC).

Since the Union Custom Code entered into force (2016), transit is ruled by Chapter 2 *Transit of Title VII Special provisions*.

Finally, while considering the return of the items to the third country, some Member States consider it as a re-export and require an export authorisation.

8. "Individual export authorisation" shall mean an authorisation granted to one specific exporter for one end user or consignee in a third country and covering one or more dual-use items;

### **Comment:**

Member States' licensing authorities may understand the exact coverage of an individual licence differently. The export of a listed facility could require one individual licence or several individual licences (one for each listed items of the facility to be exported) depending in which Member State the export application will be submitted.

One licence for the whole facility: **Belgium (Flemish Region), Bulgaria, Denmark, Estonia, France, Greece, Ireland Luxembourg, Poland and Slovenia.**

Several licences needed: none.

Both options available: **Finland, the Netherlands, Slovakia, Spain and Belgium (Walloon Region).**

<sup>27</sup> This provision is replaced by article 134 of the UCC.

<sup>28</sup> This provision is replaced by article 5 of the UCC.

<sup>29</sup> This provision is replaced by article 127 of the UCC.

<sup>30</sup> This provision is replaced by article 267(2) of the UCC.

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9. “Union General Export Authorisation” shall mean an export authorisation for exports to certain countries of destination available to all exporters who respect its conditions and requirements for use as listed in Annexes IIa to IIc;

**Comment:**

Currently, there are six European Union’s general export authorisations (EU GEA), but the European Commission may introduce the possibility of a new EU GEA on low-value shipment (the description of different EU GEA and the conditions of use are detailed in the comment related to Article 9).

10. “Global export authorisation” shall mean an authorisation granted to one specific exporter in respect of a type or category of dual-use item which may be valid for exports to one or more specified end users and/or in one or more specified third countries;

**Comment:**

A global authorisation is not available in all Member States (see table 9 related to Article 9(5)).

11. “National general export authorisation” shall mean an export authorisation granted in accordance with Article 9(2) and defined by national legislation in conformity with Article 9 and Annex IIIc;

**Comment:**

A national general export authorisation is not available in all Member States (see table 9 related to Article 9(5)).

12. “Customs territory of the European Union” shall mean the territory within the meaning of Article 3 of the Community Customs Code;<sup>31</sup>

**Comment:** see comment on Article 1(2).

13. “Non-Community dual-use items” shall mean items that have the status of non-Community goods within the meaning of Article 4(8) of the Community Customs Code.<sup>32</sup>

**Comment:**

Article 4(8) defines **non-Community goods** as “*goods other than those referred to in subparagraph 7. Without prejudice to Articles 163 and 164, Community goods shall lose their status as such when they are actually removed from the customs territory of the Community*”.

Paragraph 7 defines **Community goods** as goods

“- *Wholly obtained in the customs territory of the Community under the conditions referred to in Article 23 and not incorporating goods imported from countries or territories not forming part of the customs territory of the Community. Goods obtained from goods placed under a*

<sup>31</sup> This provision is replaced by article 4 of the UCC.

<sup>32</sup> This provision is replaced by article 5(24) of the UCC.

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*suspensive arrangement shall not be deemed to have Community status in cases of special economic importance determined in accordance with the committee procedure,*

- *Imported from countries or territories not forming part of the customs territory of the Community which have been released for free circulation,*
- *Obtained or produced in the customs territory of the Community, either from goods referred to in the second indent alone or from goods referred to in first and second indents”.*

Since the entry into force of the Union Custom Code (2016), the term “non-community goods” has been changed into non-Union goods, defined by article 5(23).

## CHAPTER II SCOPE

### Article 3

1. An authorisation shall be required for the export of the dual-use items listed in Annex I.

#### **Comment:**

The latest amendment of Annex I (list of items submitted to authorisation) has been adopted through the Commission Delegated Regulation (EU) 2019/2199 of 30 December 2019 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (*Official Journal of the European Union*, L 338, 30/12/2019)<sup>33</sup>.

It lies under the responsibility of the exporter to check if the item, he/she intends to export is listed in Annex I. The list of items should be considered as exhaustive. Thus, it does not offer room for interpretation for Member States. Nevertheless, it may appear that some listed items are not sufficiently detailed and, consequently, all components of a listed item are not necessarily mentioned as such in the list. Hence a cross-verification with the national export authority might be suitable.

Nevertheless, as mentioned by a General Note 2 to Annex I: *“The object of the controls contained in this Annex should not be defeated by the export of any non-controlled goods (including plant) containing one or more controlled components when the controlled component or components are the principal element of the goods and can feasibly be removed or used for other purposes.*

*In judging whether the controlled component or components are to be considered the principal element, it is necessary to **weigh the factors of quantity, value and technological know-how involved** and other special circumstances which might establish the controlled component or components as the principal element of the goods being procured”.*

Even if the Regulation defines a number of common factors to evaluate item’s components, the decision to submit or not non-controlled goods containing controlled components remains under the sole responsibility of the national authority of the concerned Member State.

It shall be kept in mind that an authorisation can also be required for dual-use items listed by other Council regulations. It is the case, for example, of certain exports<sup>34</sup> to:

- Iran: see annexes I and II of the Council Regulation (EU) No. 267/2012 of 23 March 2012 concerning restrictive measures against Iran as amended.

- North Korea: see Annex Ia of Council Regulation (EC) No 329/2007 of 27 March 2007 concerning restrictive measures against the Democratic People’s Republic of Korea as amended.<sup>35</sup>

<sup>33</sup> The updated version of Annex I is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2019:338:FULL&from=EN>.

<sup>34</sup> The complete list of sanctions organised by the EU on third countries and their legal basis can be found on the European External Action Service website, at the following link: [https://eeas.europa.eu/sites/eeas/files/restrictive\\_measures-2017-08-04.pdf](https://eeas.europa.eu/sites/eeas/files/restrictive_measures-2017-08-04.pdf).

<sup>35</sup> For more information, see also, Michel, Q., “Technical Note on: The EU trade control regime and adoption of restrictive measures against Syria, Iran and North Korea related to dual-use items, arms and instruments of internal repression”, available at: <http://local.droit.ulg.ac.be/jcms/service/index.php?serv=49&cat=3>.

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**Comment:**

The term “**export**” shall be understood as a transfer of dual-use items from a Member State to a destination located outside the EU. As regards intra-EU movements of dual-use items, the term “**transfers**” shall be used (see Article 22). An authorisation can be general, global or individual (see Article 9(2)).

**Comment:**

The list of the different authorisations required under this Regulation is tabled below. Specific comments regarding each authorisation have been inserted under the concerned provision.

**Comment:**

The time needed to obtain an individual or global authorisation has always been a controversial issue. Exporters are complaining regularly that broad differences exist between Member States for an equivalent application. If the average time, necessary to process an application, appears to be around 30 days, it could be extended for several months, not necessarily due to the bureaucracy of the Member States’ licencing authority. Several factors influence the assessment of the application. The sensitivity of the end-user, the items concerned, the necessity to organise internal or external consultations may extend the delay, for example.

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**Table 1: Authorisations referred to or ruled by the Regulation or the joint actions**

Authorisation	Content	Reference
European Union General Licence	Six EU GEA covering dedicated Annex I items, for certain destinations and operations.	Regulation Article 9(1)  Annex IIa to g.
National General Licence	Annex I dual-use items, except items listed in Annex II Part 2.	Regulation Article 9(4).
National Global Licence	Annex I dual-use items unless covered by EU GEA (items and destinations mentioned in Annex IIa to g).	Regulation Article 9(5).
National Individual Licence	Annex I dual-use items unless covered by EU GEA (items and destinations mentioned in Annex IIa to g).	Regulation Article 3.
National Individual Licence (Catch-all level 1)	<ul style="list-style-type: none"> <li>- Export of non-listed dual-use items,</li> <li>- Brokering activities for listed and non-listed items,</li> <li>- Transit of non-Community dual-use items and non-listed dual-use items,</li> </ul> <p><b>if</b> the exporter has been informed by his national authorities of its WMD potential application.</p>	Regulation Article 4(1), 5(1) and 6(2).
National Individual Licence (Catch-all level 1)	<ul style="list-style-type: none"> <li>- Export of non-listed dual-use items,</li> <li>- Brokering activities for dual-use items,</li> <li>- Transit of non-Community dual-use items,</li> </ul> <p><b>If</b> end-user country is subject to arms embargo and items have a military end-use.</p>	Regulation Article 4(2), 5(2) and 6(3).
National Individual Licence (Catch-all level 1)	- Non-listed dual-use items which could be used to complete military items exported without or in violation of an authorisation.	Regulation Article 4(3).
National Individual Licence	- Non-listed dual-use items	Regulation

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(Catch-all level 2)	<b>if</b> the exporter is aware that they will contribute to a use referred to in catch-all level 1.	Article 4(4).
National Individual Licence (Catch-all level 3)	<ul style="list-style-type: none"> <li>- Non-listed dual-use items</li> <li>- Brokering activities of dual-use items</li> </ul> <b>if</b> the exporter has grounds to suspect that the transaction will contribute to a use referred to in catch-all level 1.	Regulation Article 4(5) and 5(3).
National Individual Licence	Dual-use items not listed in Annex I for reasons of public security or human rights considerations.	Regulation Article 8.
National Transfer Authorisation (Intra-EU)	Dual-use items listed in Annex IV (no General Transfer Authorisation for Annex IV, Part 2).	Regulation Article 22.
National Transfer Authorisation (Intra-EU)	Dual-use items not listed in Annex IV if conditions defined by Article 22(2) are met.	Regulation Article 22(2).
National Individual Licence	Technical assistance in connection with WMD.	Joint Action Article 2.
National Individual Licence	Technical assistance in connection with conventional weapons to be exported to embargoed countries.	Joint Action Article 3.

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**Table 2: Member States' national provisions and requirements regarding the control of intangible technology transfers (ITT)**

Member State	National provisions and requirements
Austria	<p>No specific forms for ITT licences. Customs and shipping documents are not issued. Licence can be individual and global.</p> <p>The exporter has to keep records of the transfers and has to present them upon request. The license may also specify that the exporter has to submit a report on the actual transfers</p>
Belgium (Flemish Region)	No national provisions or requirements have been put in place specifically regarding the control of ITT. ITT is licensed in the same way as tangible exports.
Belgium (Brussels)	For both licenses (individual and global ones) control is done <i>a posteriori</i> on the basis of the reporting of its exports under the licence of the licence holder.
Bulgaria	No specific licence forms. ITT transfers are considered as technology transfers. An individual licence is required.
Croatia	No specific licence forms.
Cyprus	<p>No specific licence forms.</p> <p>Exporters have the obligation to apply for an export licence as is the case with tangible dual use goods. There are no specific requirements for intangible transfers. The Licensing Office may have access to the exporter's premises for control.</p>
Czech Republic	<p>Both tangible and intangible transfers follow the same licencing procedure.</p> <p>Record-keeping shall be 5 years.</p> <p>Ex-post compliance controls, i.e. regular audits, compliance visits.</p>
Denmark	<p>No specific licence forms.</p> <p>Licence can be individual, global and general.</p> <p>Ex-post compliance controls.</p>
Estonia	<p>No specific licence forms or rules.</p> <p>Record-keeping shall be 10 years.</p> <p>Customs may conduct visits.</p>

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	Licence can be individual, global or general.
Finland	No specific licence forms; the ITT application is reflected in some boxes of the form. Usual procedure for licence requirement. Licence can be individual and global. Regular compliance visits to the companies.
France	No specific forms for ITT licences. Possible ex post controls.
Germany	No specific licence forms. Licence can be individual and global. Record-keeping shall be 5 years. Customs authorities could conduct periodical and <i>ad hoc</i> compliance visits/audits at the exporter's site. Customs authorities have the right to inspect not only written documents, but also data processing systems.
Greece	None.
Hungary	No specific licence forms. Licence can be individual and global. Controls are more or less exercised through compliance checks and with the involvement and cooperation of the intelligence.
Ireland	Ireland implements controls in relation to intangible technology transfers as set out in Council Regulation (EC) No 428/2009. There are no additional national provisions or requirements regarding the control of intangible technology transfers.
Italy	No specific licence forms. Licence has to be individual, as provided by art. 6, Legislative Decree no. 221 of Dec. 15 <sup>th</sup> , 2017.
Latvia	None.
Lithuania	None. Licence can be individual or global.
Luxembourg	An intangible transfer of technology relating to dual-use items shall be subject to authorization (as it is for defence-related products) (Law, art. 46 (1)). It shall also be subject to authorization where such a transfer contributes or is likely to contribute to proliferation (Law, art. 46 (2)).

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	<p>No authorization shall be required where the intangible transfer of technology involves knowledge in the public domain, basic scientific research or the minimum necessary knowledge for patent applications (Law, art. 46 (3)).</p> <p>The intangible transfer of technology takes place on the date on which the first act formalizes the entry into relation between the provider and the beneficiary of the know-how, the knowledge or the information transmitted (Law, art. 46 (4)).</p>
Malta	No specific licence forms.
Netherlands	<p>Treated the same way as the tangible transactions.</p> <p>No specific licence forms.</p> <p>Licence can be individual and global.</p> <p>Ex-post compliance controls.</p> <p>Record-keeping obligation.</p>
Poland	Individual licence. The ITT to entity established or domiciled outside Poland required a licence. This shall not apply if the goods or technology are covered by the free movement of goods/technology within the EU.
Portugal	<p>No specific licence forms.</p> <p>Licence can be individual and global.</p>
Romania	Provisions regarding ITT in the National Rules for application of Government Ordinance no 119/2010. These provisions are similar with the provisions included in the EU dual use Regulation. The individual export license form is used for ITT.
Slovakia	None.
Slovenia	<p>No specific licence forms.</p> <p>Licence has to be individual.</p> <p>Customs perform regular or ad-hoc compliance visits.</p> <p>Record-keeping shall be 5 years.</p>
Spain	No specific licence forms.
Sweden	Sweden does not have any national provisions or requirements specifically aimed at the control of intangible technology transfers (ITT).

2. Pursuant to Article 4 or Article 8, an authorisation may also be required for the export to all or certain destinations of certain dual-use items not listed in Annex I.

**Comment:**

Article 4 establishes and organises different catch-all clauses, *i.e.* a possibility to require an

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export authorisation for non-listed items, in specific cases.

Article 8 authorises Member States to impose, unilaterally, an export authorisation for non-listed dual-use items in certain circumstances.

## Article 4

### Article 4

1. An authorisation shall be required for the export of dual-use items not listed in Annex I if the exporter **has been informed** by the competent authorities of the Member State in which he is established that the items in question are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons.

#### **Comment:**

This paragraph authorises Member States' licensing authorities to require, through a notification to exporters, an export authorisation for an item **not listed in Annex I** of this Regulation. The mechanism of notification differs from one Member State to another. It varies from a general information note published in the national Official Journal of a Member State, to topical letters to concerned exporters (**Bulgaria, Croatia, Estonia, Finland, France, Greece, Italy, Latvia, Luxembourg, Slovakia, Slovenia, Sweden and Spain**).

**Belgium (Walloon Region)** and **Poland** inform through individual and collective notification.

In **Bulgaria**, the Ministry of Economy, as a competent authority, supports and update regularly the dedicated website with all need information and European and national legislation for help the companies which are trading with dual-use items and technology.

In **Hungary**, there is a dedicated newsletter informing the exporters of the nature of the catch-all clause, which includes general description of circumstances that might trigger the catch-all clause.

In **Ireland**, individual exporters are notified on a case-by-case basis.

In the **Flemish Region**, notification in the sense of Article 4 is typically done to the concerned exporter via registered mail, informing the exporter and giving a motivation for the imposed authorisation requirement. This is not a legal requirement. The exporter needs to be merely informed by the authority; in essence an e-mail or even a telephone call would suffice from a legal point of view. The licensing authority also notifies the Customs authorities of any catch-all authorisation requirement imposed.

In **Cyprus**, it depends on the case: if the decision concerns specific exporters, only these will be notified.

In **Czech Republic**, if the catch-all measure concerns one exporter, it is informed individually by letter from the Licensing Administration of the Ministry of Industry and Trade, the information is not public. In case the measure applies to more exporters where their number cannot be precisely defined, this is published on the public website of the Ministry.

In **Romania**, the notification of catch-all clause is published in the National Gazette by the National Authority, while the concerned exporter and other authorities (customs, services) are notified as well.

2. An authorisation shall also be required for the export of dual-use items not listed in Annex I if the purchasing country or country of destination is subject to an **arms embargo imposed by a decision or a common position** adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe (OSCE) or to an arms embargo imposed by a binding

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resolution of the Security Council of the United Nations and if the exporter has been informed by the authorities referred to in paragraph 1 that the items in question are or may be intended, in their entirety or **in part**, for a military end-use. For the purposes of this paragraph, “**military end-use**” shall mean:

### Comment:

This paragraph requires Member States’ authorities to impose, through a notification to the exporters, an export authorisation for items not listed in Annex I, when the final destination or the purchasing country is subject to an arms embargo decided by:

- The EU Council of Ministers;
- The OSCE;
- The Security Council of the United Nations.

Presently, the list of countries under arms embargo includes: Afghanistan, Belarus, Central African Republic, China, Democratic Republic of Congo, Iran, Iraq, Lebanon, Libya, Myanmar (Burma), North Korea, Russia, Somalia, South Sudan, Sudan, Syria, Venezuela, Yemen, Zimbabwe.<sup>36</sup>

It shall be recalled that an export authorisation requested by Article 4(2) is submitted to the following conditions:

- The end-user has to be established in a country subject to arms embargo as listed above;
- The items should or might be used for a military end use;
- The exporter has been informed, by the national authorities, of the necessity to obtain an authorisation for such transaction.

(a) **incorporation** into military items listed in the military list of Member States;

### Comment: “military items”

In June 2000, Member States have reached an agreement on a Common list of military equipment covered by the EU Code of Conduct on Arms Exports. This list has been regularly updated and the latest version has been adopted by the Council on 17 February 2020

(equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment) (updating and replacing the Common Military List of the European Union adopted by the Council on 18 February 2019 (OJ C 85/1, 13/03/2020)<sup>37</sup>. This list is considered as the reference, by certain Members States, when implementing Article 4(2).

(b) use of production, test or analytical **equipment** and components therefor, **for** the development, production or maintenance of military items listed in the abovementioned list;

### Comment:

The wording “**equipment ... for**” should be interpreted as covering only items making a **functional contribution** to the development, production or maintenance of military items. This paragraph does not affect items that have no essential influence on the respective

<sup>36</sup> The list of destinations submitted to arms embargo is available at: <https://www.sanctionsmap.eu/#/main>.

<sup>37</sup> The latest version of the EU Military List is available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XG0313\(07\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XG0313(07)).

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process, notably items with a wide range of applications, *e.g.* consumer goods (lubricants and auxiliary agents for maintaining operability, tools with use-related fast wear and tear) or electric wiring material.

(c) use of any unfinished products in a **plant** for the production of military items listed in the abovementioned list.

### Comment:

The term “**plant**”, used in this provision and in Annex I, should be interpreted as production facilities serving, in their entirety or in part, the production of military items. Plants could include a number of facilities, machines, and equipment forming a unity.

In order to be covered by the present catch-all clause, it is enough that an entire plant partially produces military items. This will also apply if only one part of these (primary) products is used for the final production of military items.

3. An authorisation shall also be required for the export of dual-use items not listed in Annex I if the exporter **has been informed** by the authorities referred to in paragraph 1 that the items in question are or may be intended, in their entirety or in part, **for use as parts or components** of military items listed in the national military list that **have been exported from the territory** of that Member State **without authorisation or in violation** of an authorisation prescribed by national legislation of that Member State.

### Comment:

The notion of “**being informed**” is not defined by this Regulation. Nevertheless, some Member States give their own understanding of this concept as concerns brokering services of dual-use items listed in Annex I (see comment relative to Article 5(1) of this Regulation).

4. If an exporter is **aware** that dual-use items which he proposes to export, not listed in Annex I, are intended, in their entirety or in part, for any of the uses referred to in paragraphs 1, 2 and 3, he must notify the authorities referred to in paragraph 1, which will decide whether or not it is expedient to make the export concerned subject to authorisation.

### Comment:

This paragraph establishes an obligation for an exporter to **notify** to his national authorities if he/she is aware that the dual-use item not listed in Annex I, he/she intends to export will contribute to the elaboration of weapons of mass destruction or military items listed in the EU Military List. Conversely to the provisions of the first three paragraphs of Article 4, the **responsibility to estimate the possible diversion lies with the exporter**. After being informed, the national authorities might decide to submit such export to authorisation.

If an exporter, intentionally or by negligence, omits to inform the national authorities, his/her responsibility could be engaged and administrative and/or criminal penalties could be applied. To engage the exporter’s responsibility, the authorities will have to prove, on one hand, that the end-user was involved in a WMD programme and, on the other hand, that the exporter was aware of these facts.

The term “**being aware**” is not formally defined by this Regulation. It shall be understood as evidences based on information received directly or indirectly by the exporter that the items will not be used for their usual application but will contribute to the elaboration of weapons of mass destruction or military items listed in the EU Military List.

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Some Member States give their own understanding of this concept (see comment on Article 5(1)).

The initial Commission's proposal included the provision that constrained Member States' authorities to reply within a delay of 20 working days from the presentation of a complete request by the exporter. Such proposal did not obtain the necessary majority within the Council to be adopted. The initial proposal of the Commission included also an obligation for the Member States to inform the Commission of such delays, which had to be published in the *Official Journal of the European Union*. The Member States did not support this proposal either.

5. A Member State may adopt or maintain national legislation imposing an authorisation requirement on the export of dual-use items not listed in Annex I if the exporter **has grounds for suspecting** that those items are or may be intended, in their entirety or in part, for any of the uses referred to in paragraph 1.

### Comment:

This provision, also known as the "suspicion clause", establishes the possibility for a Member State to impose an export authorisation, if an exporter has grounds for suspecting that the dual-use item not listed in Annex I he/she intends to export will contribute to the elaboration of a weapon of mass destruction or military items listed in the EU Military List. The responsibility to appreciate the **risk**, and not only the possibility of diversion as imposed by paragraph 4, lies with the exporter.

If an exporter, intentionally or by negligence, omits to apply for an export authorisation, his/her responsibility could be engaged and administrative and/or criminal sanctions could be applied.

The suspicion clause is **optional**. The following Member States have introduced such clause in their national export control regime: **Austria, Belgium (Walloon Region and Flemish Region), Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, Hungary, Ireland, Latvia, Luxembourg, Malta, Poland, Romania, Slovakia and Spain.**

**Italy** doesn't have a "suspicious clause". Anyway, art. 9 of Legislative Decree no. 221 of Dec. 15th, 2017 states that a licence requirement can be imposed by the competent Authority on an export operation concerning not listed dual use items or brokering of the same, if this Authority has information coming from qualified sources that this operation may violate human rights or be connected with CBRN proliferating actions.

In his/her **evaluation** of a risk of diversion and grounds for suspecting such diversion, the exporter may review the following elements/questions<sup>38</sup>:

1. Do you know your customer? If not, is it difficult to find information about him/her?
2. Is the customer or the end-user tied to the military or the defence industry?
3. Is the customer or the end-user tied to any military or governmental research body?
4. If you have done business with the customer before - is this a usual request for them to make? Does the product fit the business profile?
5. Does the customer seem familiar with the product and its performance characteristics or is there an obvious lack of technical knowledge?
6. Is the customer reluctant to provide an end-use statement or is the information insufficient compared to other negotiations?

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<sup>38</sup>List established by the Wassenaar Arrangement.

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7. Does the customer reject the customary installation, training or maintenance services provided?
8. Is unusual packaging and labelling required?
9. Is the shipping route unusual?
10. Does the customer order an excessive amount of spare parts or other items that are related to the product, but not to the stated end-use?
11. Is the customer offering unusually profitable payment terms, such as a much higher price?
12. Is the customer offering to pay in cash?

6. A Member State which imposes an authorisation requirement, in application of paragraphs 1 to 5, on the export of a dual-use item not listed in Annex I, shall, where appropriate, **inform** the other Member States and the Commission. The other Member States shall give all due consideration to this information and shall inform their customs administration and other relevant national authorities.

7. The provisions of Article 13(1), (2) and (5) to (7) shall apply to cases concerning dual-use items not listed in Annex I.

### **Comment:**

- Article 13(1) requires from Member States to notify to other Member States and the Commission their decision to refuse, annul, suspend, substantially limit or revoke an export authorisation.
- Article 13(2) establishes an obligation for the national licencing authorities of Member States to review their denials every three years in order to evaluate if they have to be maintained, amended or renewed.
- Article 13(5) provides that, before granting an authorisation for export, transit or brokering services, a Member State shall consult all valid denials regarding items **listed in Annex I**. In case an **essentially identical transaction** has been denied, the Member State ought to consult the Member State that has issued a denial.
- Article 13(6) requests that all notifications shall be made via secure electronic means.
- Article 13(7) concerns the confidentiality requirement with respect to information sharing process.

8. This Regulation is without prejudice to the right of Member States to take national measures under Article 11 of Regulation (EEC) No 2603/69.

### **Comment:**

Regulation (EEC) No. 2603/69 has been repealed by Council Regulation (EC) No. 1061/2009 of 19 October 2009 establishing common rules for exports<sup>39</sup>, and it has lastly been codified by Regulation 2015/479 of the European Parliament and of the Council of 11 Mars 2015 on common rules for exports (OJ L 83/34, 27/03/2015). Nevertheless, Article 11 has been included into the new Article 10 which authorises Member States “*without prejudice to other Union provisions*” to adopt or apply “*quantitative restrictions on exports on grounds of public morality, public policy or public security; the protection of health and life of humans,*

<sup>39</sup> Regulation 1061/2009 has been amended by Regulation (EU) No. 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures (OJ L18/1, 21/01/2014). Article 10 has not been modified.

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*animals or plants; the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property.”<sup>40</sup>*

The term “**public security**” has been defined by the European Court of Justice in several cases: “*the concept of public security within the meaning of Article 11 of the Export Regulation covers both a Member State's **internal security and its external security** and that, consequently, the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations may affect the external security of a Member State*”<sup>41</sup>. In this regard the Court “*observed that it is common ground that the **exportation** of goods capable of being used for military purposes to a country at war with another country may affect the public security of a Member State*”<sup>42</sup>.

If a Member State can require an export authorisation, based on Article 11 in case of threat to the public security as defined above, it is not obvious that such authorisation can be applied to an export of dual-use items. According to the Court, Article 11 “*ceases to be justified if Community rules provide for the necessary measures to ensure protection of the interests enumerated in that article*”<sup>43</sup> which is precisely the case for dual-use items covered by Article 8 of this Regulation.

**Table 3: Conditions attached to national catch-all authorisations**

Member State	Catch-all conditions established by Member State
Austria	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Applies only to one specific transaction and valid for three years (Art. 4, 2<sup>nd</sup> indent of the Decision of the Flemish Government of 14 March 2014).</p>
Belgium (Flemish Region)	<p>When a transaction has been put under catch-all authorisation requirement, the procedure is treated as a standard individual licence procedure. An (original) end use certificate is required. In the exceptional case where the concern leading to the catch-all decision turns out to be unfounded, a normal individual licence will be granted for the transaction concerned. Specific conditions for use can be attached to any individual licence.</p> <p>That individual licence is personal and is granted for that specific transaction. It is valid for three years (Art. 4, 2<sup>nd</sup> indent of the Decision of the Flemish Government of 14 March 2014).</p>
Belgium (Brussels)	<p>Only an exporter is covered (legal entity or natural person).</p> <p>A catch-all authorisation is an individual decision which is valid only for the applicant.</p> <p>Applies to one specific transaction / end-user / consignee and valid for one year.</p>

<sup>40</sup> OJ L 291, 07/11/2009, p. 1.

<sup>41</sup> Ground 44 of Case 124/95 of 14 January 1997 *The Queen, ex parte Centro-Com Srl v HM Treasury and Bank of England*: [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61995J0124](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61995J0124).

<sup>42</sup> Ground 28 of Case C-70/94 of 17 October 1995. - *Fritz Werner Industrie-Ausrüstungen GmbH v Federal Republic of Germany*: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61994CJ0070&from=EN>.

<sup>43</sup> Ground 46 of Case 124/95 of 14 January 1997, *op cit*.

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Bulgaria	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Valid up to one year with the possibility of extension up to six months (like the individual export license).</p>
Croatia	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Valid for one year.</p>
Cyprus	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Valid until revocation.</p>
Czech Republic	<p>Only an exporter is covered (legal entity or natural person), valid for brokers and mother/daughter companies.</p> <p>Valid until revocation.</p>
Denmark	<p>Only an exporter is covered (legal entity), not valid for mother/daughter companies.</p> <p>Applies to one specific transaction and valid for 2 years or until revocation.</p>
Estonia	<p>Only an exporter is covered (legal entity or natural person), normally not valid for mother/daughter companies.</p> <p>Applies to one specific transaction and is valid until the validity of a licence or until revocation.</p>
Finland	<p>Only an exporter is covered (legal entity or natural person), valid for mother/daughter companies, if located in Finland.</p> <p>Applies to one specific transaction and valid until revocation.</p>
France	<p>Only an exporter is covered, not valid for mother/daughter companies.</p> <p>Valid until prospect under catch-all is pending.</p>
Germany	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Applies to one specific transaction and valid until revocation.</p>

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Greece	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Applies to one specific transaction and valid for 2 months or until revocation.</p>
Hungary	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>The catch-all decision is valid until revoked, or a license is granted on the same subject matter or if the circumstance that triggered the catch-all has changed substantially.</p>
Ireland	<p>A licence issued under the “catch-all” clause is for the export of specified goods to a specified end user for a specified end use.</p>
Italy	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Valid for three years and could be renewed.</p>
Latvia	<p>None.</p> <p>One individual licence for one transfer to an appointed end-user.</p>
Lithuania	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Only individual licences can be granted. Valid for 1 year.</p>
Luxembourg	<p>Conditions for catch-all clause authorisations are decided by the Ministers on a case-by-case basis.</p>
Malta	<p>Only an exporter is covered (natural person only).</p>
Netherlands	<p>Only an exporter is covered (legal entity or natural person), normally not valid for mother/daughter companies (depends on the level of control of mother company).</p> <p>Valid until revocation. The catch-all is applied for exports of the specific shipment in question that has led to the catch-all, but also for any other shipments after that. It is imposed on a country, not a specific end user, in order to take into account the risk of diversion. Further, a condition is imposed that if the goods get another destination than the country for which a licence requirement is imposed, the exporter has to inform its authorities.</p>
Poland	<p>Only an exporter is covered (legal entity or natural person), not valid for related</p>

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	companies.
Portugal	<p>Only an exporter is covered (legal entity or natural person), valid for related companies.</p> <p>Valid until revocation.</p>
Romania	<p>Whether the National authority decides to apply catch-all procedure, shall immediately inform the exporter and the other authorities concerned (customs, services). The catch-all clause is established by an executive order, published in the National Gazette. It is valid until its revocation, or if the national legislation changes. Only the Romanian exporter is covered (legal or natural person), the order it is not valid for mother/daughter companies.</p> <p>The exporter shall inform the National Authority whether he still intends to export the items. In this case, he shall apply for a license, after the executive order establishing the catch-all clause is published in the National Gazette.</p> <p>After publication, the executive order applies to any exporter who is involved in an essentially identical transaction.</p> <p>If an exporter evades the final decision of the National authority and exports or attempts to export without license, he commits a criminal offence.</p>
Slovakia	Conditions of “catch-all” authorisations are the same as for dual use items.
Slovenia	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Valid until revocation.</p>
Spain	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Fixed term or until revocation.</p>
Sweden	There are no specific conditions attached to catch-all clause authorisations.

**Table 4: Effects of the non-response of an authority of a Member State in case it has implemented a catch-all provision and average time to answer (4.3, 4.4 and 4.5)**

Member State	Consequence of lack of an answer from an authority of a Member State
Austria	Once the item is "caught", its export requires an authorization, i.e. the exporter may not export the item without a license. Otherwise he would commit a punishable offense.

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<b>Belgium</b>	<p>If an exporter fails to await the decision of the licencing office and export or attempt to export, he or she commits a criminal offence in case the licencing office decides to make the export subject to authorisation. Belgian legislation does not provide a timeframe in which the licencing office is required to answer an exporter's request concerning (non-listed) dual-use goods.</p> <p>If an exporter has reported a transaction, a time to answer varies from one day to several weeks.</p>
<b>Bulgaria</b>	<p>Answer is given within 30 days after receipt of the application. The applicant is informed by the final decision within 7 days. Export under the catch-all clause could be performed only after the official approval by the authority.</p>
<b>Croatia</b>	<p>Exporter has to await the answer of the authorities and it will be an offence if he or she fails to do so. Dual-use items can be exported only after the Ministry has granted an export licence or decided that the licence is not required. There is a 30 days deadline for a decision of the authorities and 60 days if additional information is required.</p>
<b>Cyprus</b>	<p>The exporter has to wait the answer of the authorities. Dual-use items can be exported only after the Licensing Office has granted an export licence or decided that the licence is not required.</p> <p>No specific deadline to answer.</p>
<b>Czech Republic</b>	<p>Exporter has to await the answer of the authorities and it will be an offence if he or she fails to do so. The deadlines for decision process including a processing of an application are 30 days or, in special cases, 60 days starting from the day when an application was submitted.</p> <p>If an exporter has reported a transaction, a time to answer is up to 30 days.</p>
<b>Denmark</b>	<p>An exporter has to await the decision of the authorities in relation to Article 4(4) and if he or she fails such act would be seen as a criminal offence according to Danish Law. Exporter's failure to wait might also entail an administrative sanction, i.e. fine.</p>
<b>Estonia</b>	<p>There is no timeframe, but an exporter is obliged to await the decision. The authority answers without delay. The time can vary from days to weeks.</p>
<b>Finland</b>	<p>Exporter has to wait. Answer by the licensing authority shall be given without undue delay. Upon request, the authority shall supply the exporter with an estimated deadline to issue a decision. (Finnish Administrative Procedure Act 434/2003, Section 23).</p>
<b>France</b>	<p>Silence of the authority is legally considered to be a denial after 9 months.</p>

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Germany	<p>Exporter is obliged to await the decision of the authorities and it would be an offence according to German Law if he or she fails to do so.</p> <p><u>Examples:</u>  <u>According to § 18 (5) Foreign Trade and Payments Act (AWG) – entering into force on 1<sup>st</sup> September 2013 - a prison sentence of up to five years may be imposed on anyone who exports without export authorisation according to Art. 4 (1), (2), (3), (4) Reg. (EC) No 428/2009.</u>  <u>According to § 18 (6) AWG the attempt is also punished.</u>  <u>According to § 18 (7) AWG a prison sentence not below 1 year (up to 15 years) will be imposed on anyone who commits an act described above, acting professionally or as a member of a gang that has been formed for the continuous committal of such criminal offences.</u></p> <p><u>According to § 18 (8) AWG a prison sentence not below 2 years (up to 15 years) will be imposed on anyone who commits an act described above, acting professionally as a member of a gang that has been formed for the continuous committal of such criminal offences.</u></p>
Greece	No average time of reply. Depends on the case.
Hungary	An exporter has to await the answer of the authorities. However, if no answer is received within the legally set timeframe, the applicant may file a complaint at the supervisory administrative body, which will order the silent administrative body to act or will decide itself.
Ireland	If an exporter has been advised that a licensing requirement is being invoked pursuant to the catch-all clause, they must await the decision on the licence application before exporting the goods. Irish legislation does not provide a fixed time period in which an application will be considered, this varies from case to case.
Italy	From when an exporter has applied to the Authority, after getting a catch-all authorisation, his application is dealt with as with any individual licence application (between 30 and 60 days to get a licence or a denial).
Latvia	No effects of non-response.

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<b>Lithuania</b>	<p>Exporter's (legal or natural person) request to provide information has to be considered within 20 working days starting from its receipt by the competent authority.</p> <p>Exporter has to await the decision from licensing authority. Normally decision on license issuance is made within 30 working days.</p> <p>If the reply is not delivered within a specific deadline set for consideration of a request (application), or when an exporter objects to the reply delivered by the competent authority he or she is entitled to make a complaint in conformity to the procedures laid down within Chapter III of the Republic of Lithuania Law on Public Administration and other legal acts (Article 14 of the Republic of Lithuania Law on Public Administration (27.06.2006 No X-736) and Article 30 of the Government of the Republic of Lithuania Resolution No 875 dated 22.08.2007).</p>
<b>Luxembourg</b>	<p>The silence of the competent authority regarding an application does not automatically mean that the license is granted (neither for DU-Goods, nor for military defence products). Average time to answer is set by the Law at up to 60 business days.</p>
<b>Netherlands</b>	<p>If an exporter has reported a transaction, he or she has to await the decision and it would be an offense if he or she fails to do so. In general, the time to respond to a licence application is 8 weeks. However, there are specific situations in which this period can be extended. The extension will generally take another 8 weeks.</p>
<b>Poland</b>	<p>Exporter has to await the decision of the authorities and it would be an offence according to Polish Export Control Law if he or she fails to do so. According to the Polish Administrative Code the decision shall be given without undue delay, but not later than 30 days. However, in special cases this deadline can be postponed but the authority has to supply the exporter with an estimated deadline to issue a decision.</p>
<b>Portugal</b>	<p>If an exporter has reported a transaction, he or she has to await the decision and it would be an offense if he or she fails to do so the time to answer is up to 10 days.</p>
<b>Romania</b>	<p>According to the Romanian legislation, the competent authorities must always provide an answer in response to a consultancy application sent by an exporter. The time frame is up to 30 days after receiving all relevant documents. If the catch-all procedure is necessary, the National Authority shall immediately inform the exporter he shall apply for a license. The time frame to process a licence application for catch all is the same as for any individual licence, up to 45 days after receiving all relevant documents. However, the overall period is longer due to the need to complete all necessary steps.</p>
<b>Slovakia</b>	<p>The authority has to decide within 90 days on an application. In case of exporting without a licence there's a penalty.</p>
<b>Slovenia</b>	<p>Exporter is obliged to wait for the decision of the Ministry. In case of exporting without a licence there's a penalty.</p>

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Spain	Licence not granted. Average time is the normal procedure to manage a licence inquiry.
Sweden	If the exporter has been informed that the product has been put under export control through a catch-all decision then the exporter needs to wait for the decision on the license application by the Swedish Export Control Agency.

**Table 5: Possibility to appeal against a catch-all denial issued by a Member State**

Member State	Possibility to appeal against a catch-all denial
Austria	Yes. Only administrative appeal to Administrative Court is possible.
Belgium	Yes, by an appeal before to the Administrative Court (State Council).
Bulgaria	Catch-all denial may be appealed under the procedure of the Administrative Procedure Code.
Croatia	Yes, an action to the Administrative Court is possible.
Cyprus	An appeal is possible to the Court.
Czech Republic	It is not possible to lodge a remonstrance against a decision of the Ministry regarding the granting, non-granting, cancellation, suspension, modification, or revocation of an individual export authorisation, global export authorisation, or authorisation to provide brokering services. Such a decision is excluded from the decision-making processes of the courts of law (para 10 of Act No. 594/2004 Coll.).
Denmark	Yes, the exporter can appeal to a higher authority.
Estonia	Yes, as it is the case for any administrative decision, it may be disputed in an administrative court.
Finland	Yes, an appeal to the Highest Administrative Court is possible.
France	Yes, same procedure as for denial based on license application:  1 informal appeal (demand for reconsideration);  2 formal appeal to Administrative Court.

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Germany	Yes.
Greece	Yes, appeal to the Administrative Court is possible like for all administrative decisions (no special procedure).
Hungary	Yes, first appeal to the second instance at the director general of the licencing authority under administrative procedures (governed by law), and afterwards petition to the Court for reviewing administrative decisions.
Ireland	A statutory right of appeal is provided for in the Control of Exports (Appeals) Regulations 2018 (S.I. No. 457 of 2018).
Italy	Yes.
Latvia	Yes. Any denial of any licence can be appealed in the Administrative Court during the period of 1 month, when the denial was issued.
Lithuania	Yes.
Luxembourg	Any denial of any licence can be appealed in the Administrative Court during the period of three months after notification of the denial to the concerned exporter.
Netherlands	Yes, it is possible to appeal against a catch-all licencing decision, regardless if it is an approval or a denial.
Poland	Yes, it is possible to appeal against a catch-all licencing decision, regardless if it is an approval or a denial.
Portugal	Yes.
Romania	Yes.
Slovakia	Yes.
Slovenia	Yes, the exporter can appeal to Administrative Court.
Spain	Yes. Administrative appeal and appeal to a Court.
Sweden	No.

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**Table 6: Catch-all export controls other than those required by Article 4**

Member State	Additional catch-all controls
Austria	In certain cases, for countries not subject to embargo (Article 7 of Foreign Trade Act. 2005).
Belgium	None.
Bulgaria	None.
Croatia	None.
Cyprus	None.
Czech Republic	None.
Denmark	None.
Estonia	Yes, for non-listed goods which have characteristics of export of controlled goods due to their qualities, end-use or end-user or for the considerations related to the public security or human rights. Strategic goods Act §2 (11).
Finland	None.
France	Yes, based on article 8 of EC 428/2009.
Germany	<p>Sect. 9 AWV: Use of the items in the nuclear area and specific country: The items are or may be intended, in their entirety or in part, for the setting-up, operation of or incorporation into a nuclear plant. The term “nuclear plant” is defined in category 0 of Annex I Reg. (EC) No. 428/2009.</p> <p>An authorisation pursuant to section 9 AWV shall only be required if the purchasing country or country of destination is one of the following: Algeria, Iran, Iraq, Israel, Jordan, Libya, North Korea, Pakistan, and Syria.</p>
Greece	None.

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Hungary	None.
Ireland	None.
Italy	None.
Latvia	None.
Lithuania	None.
Luxembourg	None.
Malta	None.
Netherlands	None.
Poland	None.
Portugal	None.
Romania	Yes, for art. 8 of EC Regulation 428/2009.
Slovakia	None.
Slovenia	None.
Spain	None. Spain has no national regulation on this topic.
Sweden	None.

## Article 5

### **General comment:**

Article 5 organises the control of the brokering activities. This provision concerns transactions between two (or more) third countries organised by an entity/person established within the EU. If the item is located within the EU territory and will be exported to a third country, it will not require a brokering authorisation, but a common export authorisation established by Article 9, notwithstanding the fact that it might involve some brokering activities.

The fact that Article 5 covers brokering activities involving two third countries, being arranged by a broker located within the EU, does not prohibit Member States to extend such control to other brokering activities, such as transactions between two third countries organised and negotiated outside the EU by an entity/person established within the EU. Presently, **Germany** considers that brokering activity undertaken by a German resident in a third country might be subject to end-use related controls, if this activity concerns items listed in Annex I of this Regulation.

Article 5(1) is drafted like the catch-all provisions established by Article 4. Nevertheless, if the mechanism of the first paragraph of this Article is similar to the one established by the first paragraph of Article 4, it should not be assimilated to a catch-all clause, as long as it does not control export of dual-use items not listed in Annex I. It only allows Member States to submit to authorisation brokering services of **dual-use items listed in Annex I**.

Contrary to the control of export, where all transactions linked to listed dual-use items have to be authorised, brokering activities of listed items have to be authorised by Member States, only if the **broker has been informed** by his national authority that the transaction required an authorisation and/or he/she is aware that the concerned dual-use items are intended for a WMD end-use.

Complementarily, paragraphs 2 and 3 allow Member States to adopt or maintain in their national legislation a catch-all clause for brokering activities for **non-listed dual-use items**, in case these will contribute to a **WMD program** and for dual-use items destined for **military end-use** and countries submitted to **embargoes**. Such catch-all clause can be extended to cases where the broker “has grounds for suspecting” that the items might contribute to a WMD end-use (see comment on Article 4). This last national catch-all clause can be applied to listed and non-listed dual-use items.

Finally, certain Member States request from the broker to be registered. The registration can include the list of items and countries for which they are offering brokering services.

**Bulgaria** has introduced an obligation to register for brokers dealing with items listed in Annex I of this Regulation (Article 46 of the Law on export control of arms and dual use items and technologies).

**Latvia** requires that brokers register, but only for military list items.

**Slovakia** requires also the registration of brokers.

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1. An authorisation shall be required for brokering services of dual-use items listed in Annex I if the broker has been informed by the competent authorities of the Member State in which he is resident or established that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in Article 4(1). If a broker is aware that the dual-use items listed in Annex I for which he proposes brokering services are intended, in their entirety or in part, for any of the uses referred to in Article 4(1), he must notify the competent authorities which will decide whether or not it is expedient to make such brokering services subject to authorisation.

**Comment:**

The terms “being informed” and “being aware” remain undefined by the Regulation. As regards the term “being informed”, some Member States give their own understanding of this concept. The same happens with regard to the definition of “being aware”.

2. A Member State may extend the application of paragraph 1 to non-listed dual-use items for uses referred to in Article 4(1) and to dual-use items for military end use and destinations referred to in Article 4(2).

**Comment:**

This provision has raised some controversial discussion on its field of implementation. If the first part of the sentence, concerning the possibility for a Member States to control brokering transaction for non-listed dual use items in case it will contribute to a WMD program, does not raise any concerns, it is not clear how the term of the second part of the sentence shall be understood. Does the term “dual-use items” allow Member States to control listed and non-listed dual-use items or only listed items? It seems that it is the broad interpretation that shall prevail, or at least, it is the most commonly accepted by Member States.

**Table 7: Measures taken by Member States to extend brokering controls in conformity with Article 5(2)**

Member State	Content	Reference
Austria	An authorisation shall be required for the brokering of dual-use items if the Federal Minister for Science, Research and Economy notifies the broker that the items in question are or may be intended for uses referred to in Article 4(1) and (2) of the Regulation.	Article 15.1 of the Foreign Trade Act (Außenwirtschaftsgesetz 2011, BGBl. I Nr. 26/2011.
Belgium (Flemish region)	None.	
Bulgaria	An authorisation shall be required for	Article 34, par. 4 of the Defence-Related Products and Dual-Use Items and

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	<p>the brokering of dual-use items:</p> <ol style="list-style-type: none"> <li>1. <b>listed</b> in Annex I to the Regulation, when the items are or may be intended for the uses specified in Article 4(2) of that Regulation;</li> <li>2. not listed in Annex I to the Regulation, when the items are or may be intended for the uses specified in Article 4(1) of that Regulation.</li> </ol>	<p>Technologies Export Control Act, State Gazette No 26/29.3.2011, effective 30.6.2012.</p>
<p style="text-align: center;">Croatia</p>	<p>An authorisation shall be required for the brokering of dual-use items <b>not listed</b> in Annex I to the Regulation, if the Ministry of Foreign and European Affairs informs the broker that dual-use items are or may be, in whole or in part, used for the purposes set forth in Article 4(1) and (2) of the Regulation.</p>	<p>Act on Control of dual-use items (OG 80/11 i 68/2013).</p>
<p style="text-align: center;">Czech Republic</p>	<p>An authorisation shall be required for the brokering of dual-use items if the Ministry informs the broker that:</p> <ol style="list-style-type: none"> <li>1. dual-use items <b>not listed</b> in Annex I to the Regulation are or could be intended, wholly or in part, for use pursuant to Article 4(1) of that Regulation;</li> <li>2. dual-use items are or could be intended, wholly or in part, for military end-uses specified in Article 4(2) of the Regulation.</li> </ol>	<p>Par. 3 of Act No 594/2004 Coll., Implementing the European Community Regime for the Control of Exports, Transfer, Brokering, and Transit of Dual-Use Items (as amended).</p>
<p style="text-align: center;">Estonia</p>	<p>An authorisation shall be required for the brokering of dual-use items which have characteristics of strategic goods because of their end-use or end-user, public security or human rights consideration, although they have not been entered in the list of strategic goods.</p>	<p>Par. 6(7) of the Strategic Good Act.</p>
<p style="text-align: center;">Finland</p>	<p>An authorisation shall be required for brokering of dual-use items:</p> <ol style="list-style-type: none"> <li>1. <b>listed</b> in Annex I to the Regulation, if the broker has</li> </ol>	<p>Par. 3(2) and 4(1) of Law 562/1996 (as</p>

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	<p>been notified by the Ministry for Foreign Affairs that the items are or may be intended wholly or partly in Articles 4(1) or 4(2) of that Regulation;</p> <p>2. <b>not listed</b> in Annex I to the Regulation, if the broker has been notified by the Ministry for Foreign Affairs that the items are or may be intended wholly or partly for the uses specified in Article 4(1) of that Regulation.</p>	amended).
Greece	An authorisation shall be required for the brokering of <b>listed</b> dual-use items for military end-uses and destinations referred to in Article 4(2) of the Regulation.	Par. 3.2.3 of 'Ministerial Decision No 121837/e3/21837/28-9-2009'.
Hungary	<p>An authorisation shall be required for the brokering of dual-use items:</p> <p>1. <b>listed</b> in Annex I to the Regulation, when the items are or may be intended for the uses specified in Article 4(2) of that Regulation;</p> <p>2. <b>not listed</b> in Annex I to the Regulation, when the items are or may be intended for the uses specified in Article 4(1) and (2) of that Regulation.</p>	Par. 17.1 of Government Decree No 13 of 2011 on the foreign trade authorisation of dual-use items.
Italy	None.	
Ireland	An authorisation shall be required for the brokering of dual-use items <b>not listed</b> in Annex I to the Regulation, for any of the uses referred to in Article 4(1) of that Regulation and for dual-use items for military end-uses and destinations referred to in Article 4(2) of the Regulation.	Sections 8(a) and (b) of Statutory Instrument 443 of 2009, Control of Exports (Dual-Use Items) Order 2009, as amended.
Latvia	All brokering transactions are controlled for dual-use items regardless of their use.	Latvian Law on the Circulation of Strategic Goods.
Luxembourg	Luxembourg Law (art. 42 (1)) requires an authorization for brokering services of dual-use items not listed in Annex I of	Law of 27 June 2018 on export controls as published in the Mémorial A No 603 of 20 July 2018.

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	Regulation (EC) No 428/2009 for the uses specified in Article 4 (1) of Regulation (EC) No 428/2009, and dual-use items for military end-uses and destinations as referred to in Article 4 (2) of Regulation (EC) No 428/2009.	
Netherlands	<p>An authorisation shall be required for the brokering of dual-use items:</p> <ul style="list-style-type: none"> <li>– listed in Annex I of the Regulation, when the items are or may be intended for the uses specified in Article 4(2) of that Regulation;</li> <li>– not listed in Annex I of the Regulation, when the items are or may be intended for the uses specified in Article 4(1) and (2) of that Regulation.</li> </ul> <p>Authorisation requirements have been imposed for brokering services of 37 chemical substances when the destination is Iraq, regardless of the specific consignee or end-user.</p>	<p>Strategic Services Act — Wet strategische diensten, Official Journal Stb 445 of 29 September 2011.</p> <p>Decree Goods for Dual-Use Iraq — Regeling goederen voor tweeerlei gebruik Irak.</p>
Poland	There are no national measures taken by Poland to extend brokering controls in conformity with Article 5(2). The Regulation 428/2009 is implemented directly.	
Romania	An authorisation shall be required for the brokering of dual-use items <b>not listed</b> in Annex I to the Regulation if the items in question are or may be intended, in their entirety or in part, for any uses referred to in Article 4(1) and (2) of the Council Regulation.	Article 14(2) of the Emergency Order No 119 of 23 December 2010 (GEO No 119/2010) on the ‘control regime for operations concerning dual-use items’.
Slovenia	None	
Spain	An authorisation shall be required for the brokering of <b>listed</b> dual-use items for military end-uses and destinations referred to in Article 4(2) of the Regulation.	Article 2(6) of the Royal Decree 679/2014, of 1 August 2014 on the control of external trade in defence material, other material and dual-use goods and technologies.

## Article 5

Sweden	No.	
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3. A Member State may adopt or maintain national legislation imposing an authorisation requirement on the brokering of dual-use items, if the broker has grounds for suspecting that these items are or may be intended for any of the uses referred to in Article 4(1).

**Comment:**

Member States that have used the possibility to extend brokering controls, when the broker has ground for suspecting that the items are or may be intended for use in “connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons” (article 4(1)) are: **Austria**<sup>44</sup>, **Bulgaria**<sup>45</sup>, **Croatia**<sup>46</sup>, **Czech Republic**<sup>47</sup>, **Estonia**<sup>48</sup>, **Finland**<sup>49</sup>, **Greece**<sup>50</sup>, **Hungary**<sup>51</sup>, **Ireland**<sup>52</sup>, **Latvia**<sup>53</sup>, **Luxembourg**<sup>54</sup>, **Netherlands**<sup>55</sup> and **Romania**<sup>56</sup>.

4. The provisions of Article 8(2), (3) and (4) shall apply to the national measures referred to in paragraphs 2 and 3 of this Article.

**Comment:**

Article 8(2) to (4) establishes an obligation to notify to the Commission any measure and its modifications adopted under these provisions. Such measures should afterwards be published in the C series of the *Official Journal of the European Union*. The latest publication is available on (OJ C 16/4 of 17/01/20):  
[https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc\\_158576.pdf](https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158576.pdf).

<sup>44</sup> Article 5 of the 2011 First Foreign Trade Regulation (Erste Außenwirtschaftsverordnung 2011), BGBl. II Nr. 343/2011, published on 28 October 2011.

<sup>45</sup> Article 47 of the Defence-Related Products and Dual-Use Items and Technologies Export Control Act (Promulgated, State Gazette No 26/29.3.2011).

<sup>46</sup> Par. 3 of the Act on Control of dual-use items (OG 80/11 i 68/2013)

<sup>47</sup> Par. 3(4) of the Act No 594/2004 Coll. ‘Implementing the European Community Regime for the Control of Exports, Transfer, Brokering, and Transit of Dual-Use Items’ (as amended).

<sup>48</sup> Par. 77 of the Strategic Goods Act

<sup>49</sup> Par. 3.2 and 4.4 of law 562/1996 (as amended).

<sup>50</sup> Par. 3.2.2 of the Ministerial Decision No 121837/e3/21837/28-9-2009.

<sup>51</sup> Par. 17(2) of Government Decree No 13 of 2011 on the foreign trade authorisation of dual-use items

<sup>52</sup> Section 9 of Statutory Instrument 443 of 2009, Control of Exports (Dual-Use Items) Order 2009, as amended.

<sup>53</sup> In accordance with the Latvian Law on the Circulation of Strategic Goods, all brokering transactions are controlled for dual-use items regardless of their use.

<sup>54</sup> Luxembourg Law (art. 42 (2)).

<sup>55</sup> Article 4a(5) of the Strategic Services Act — Wet strategische diensten.

<sup>56</sup> Par. 3 of Article 14 of the Emergency Order No 119 of 23 December 2010 (GEO No 119/2010) on the control regime for operations concerning dual-use items.

## Article 6

### **General Comment:**

This article establishes the **possibility** for Member States to submit, on case-by-case basis, a transit operation to authorisation. It does not submit all transit operations, as it is a case of export, to authorisation. Therefore, this **provision might not be equally applied** by the 28 Member States. Considering their national export control policies, some Member States might prohibit or require an authorisation or not, for the same transit operation.

If dual-use items are brought as non-Community goods from third countries into the EU territory and remain **at all times** assigned to a **customs-approved treatment or use** without having as their destination a port or airport situated in those Member States, such operation **might** be prohibited or submitted to authorisation by Member States' competent authorities. Such authorisation could be required for listed and non-listed dual-use items, **if** the items are or may be intended for a use in a WMD application. If such condition appears to be necessary to extend the control to non-listed items, it is not appropriate for listed dual-use items. The necessity to list dual-use items is precisely founded on their potential military use. Therefore, inserting a possibility to submit to authorisation a transit of listed dual-use items seems to be unnecessary, as far as its potential non-peaceful application is doubtless, owing to the fact that it is already listed. Nevertheless, it should be admitted that Article 4(1) focuses essentially on a potential WMD use and not on broad military use, as it is a case of Article 2(1).

The dual-use items **imported** from third countries (non-EU Member States) and subsequently **released** for free circulation in the Community are not covered by Article 6 and should be considered as Community goods. Such items will be subjected to an export **authorisation**, if further transferred outside the EU.

It should be noted that, in the context of the fight against terrorism, the new article **36A of the Customs Code**<sup>57</sup> exempts from the summary declaration (pre-arrival, pre-departure declaration) only goods in external transit carried by means of transport passing through the territorial waters or the airspace of the customs territory of the EU, without a stop within this territory and other cases, where duly justified by the type of goods or traffic, or where required by international agreements. In this context, Member States' Customs Authorities could monitor appropriate controls to verify the accuracy of the summary declaration.

Complementary to this article, it should be recalled that some Member States have a transit definition slightly different to the one used by this Regulation (see comment on Article 2 (7)). Therefore, they might have to extend the scope of controls of transfer activities. Furthermore, some Member States require an authorisation for all external transits of dual-use items. In this regard, the scope of transit operations concerned will be the one of the national legislations and not the one of this Regulation. The Member States concerned are **Belgium, Luxembourg, Malta and Poland**.

1. The transit of non-Community dual-use items listed in Annex I may be prohibited by the competent authorities of the Member State where the transit occurs if the items are or may be intended, in their entirety or in part, for uses referred to in Article 4(1). When deciding on

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<sup>57</sup> This provision is replaced by article 127 of the UCC.

## Article 6

such a prohibition the Member States shall take into account their obligations and commitments they have agreed to as parties to international treaties or as members of international non-proliferation regimes.

2. Before deciding whether or not to prohibit a transit a Member States may provide that its competent authorities may impose in individual cases an authorisation requirement for the specific transit of dual-use items listed in Annex I if the items are or may be intended, in their entirety or in part, for uses referred to in Article 4(1).

### Comment:

**Austria**<sup>58</sup>, **Belgium (Flemish Region and Walloon Region)**<sup>59</sup>, **Bulgaria**<sup>60</sup>, **Croatia**<sup>61</sup>, **Estonia**<sup>62</sup>, **Finland**<sup>63</sup>, **Germany**<sup>64</sup>, **Greece**<sup>65</sup>, **Hungary**<sup>66</sup>, **Ireland**<sup>67</sup>, **Luxembourg**<sup>68</sup>, the **Netherlands**<sup>69</sup> and **Romania**<sup>70</sup> have introduced, in their national legislation, the possibility to impose an authorisation for specific transits, if the items are or may be used in “*connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons*” (Article 4(1)).

**Belgium (Walloon Region)** has formally subjected to prior authorisation the transit of items listed in Annex I, according Art 6 of the Walloon Government Decree of 6 February 2014 regulating export, transit and transfer of dual-use items and technology (Belgian Official Gazette of 19/02/2014).

**Belgium (Flemish Region)** has formally subjected to prior authorisation the transit of items listed in Annex I, as well as non-Annex I goods if:

- The authorities have informed the involved entity the items are or may be intended, in their entirety or in part, for uses referred to in Article 4(1) or are or may be intended, in their entirety or in part, for a military end-use referred to in Article 4(2); or
- The involved entity is aware or has a well-substantiated suspicion that the items are or may be intended, in their entirety or in part, for uses referred to in Article 4(1) or are or may be intended, in their entirety or in part, for a military end-use referred to in Article 4(2).

This does not preclude the possibility to simply prohibit a transit of Annex I controlled items in conformity with article 6 of the Regulation.

<sup>58</sup> Article 15 of the 2011 Foreign Trade Act — Außenwirtschaftsgesetz 2011, BGBl. I Nr. 26/2011.

<sup>59</sup> Article 6 and 7 of the Flemish Government Decree of 14 March 2014 regulating export, transit and transfer of dual-use and the delivery of technical assistance (Belgian Official Gazette of 2 May 2014), Article 5 and 6 of the Walloon Government Decree of 6 February 2014 regulating export, transit and transfer of dual-use items and technology (Belgian Official Gazette of 19.02.2014).

<sup>60</sup> Articles 48-50 of the ‘Defence-Related Products and Dual-Use Items and Technologies Export Control Act’, State Gazette No 26/29.3.2011.

<sup>61</sup> Act on Control of dual-use items (OG 80/11 i 68/2013).

<sup>62</sup> Par. 3, 6 and 7 of the Strategic Goods Act (SGA).

<sup>63</sup> Par. 3.3 of law 562/1996.

<sup>64</sup> Section 44 of the German Foreign Trade and Payments Regulation — Aussenwirtschaftsverordnung — AWW

<sup>65</sup> Par. 3.3.2 of the Ministerial Decision No 121837/ e3/21837/28-9-2009.

<sup>66</sup> Par. 18 of Government Decree No 13 of 2011 on the foreign trade authorisation of dual-use items.

<sup>67</sup> Section 10 of Statutory Instrument 443 of 2009, Control of Exports (Dual-Use Items) Order 2009, as amended.

<sup>68</sup> Law, art. 43 (1)).

<sup>69</sup> Article 4(a)(1) of the Decree for Strategic Goods (Besluit strategische goederen).

<sup>70</sup> Par. 1 of Article 15 of the Emergency Order No 119 of 23 December 2010 (GEO No 119/2010) ‘on the control regime for operations concerning dual-use items’.

## Article 6

**Italy** may subject to licence requirements the transit of listed and not listed items, goods under the authority of EU Reg. 125/2019 or under the authority of an EU regulation for export restrictions to Third Countries, as provided by Art. 7 of Legislative Decree no. 221/2017.

In **Latvia**, transit license is required for listed goods, except if the goods listed in annexes IIa-IIf of Regulation 428/2009 are in transit to countries listed in annexes IIa-IIf of Regulation 428/2009, or if the goods listed in annexes IIa-IIf of Regulation 428/2009 are in transit from countries listed in annexes IIa-IIf of Regulation 428/2009, and has a valid export licence.

3. A Member State may extend the application of paragraph 1 to non-listed dual-use items for uses referred to in Article 4(1) and to dual-use items for military end use and destinations referred to in Article 4(2).

### **Comment:**

This provision has raised some controversial discussion on its field of implementation. If the first part of the sentence concerning the possibility for a Member State to control transit for non-listed dual-use items in case it will contribute to a WMD program does not raise concerns, it is not clear how the term of the second part of the sentence shall be understood. Does the term “dual-use items” allow Member States to control listed and non-listed dual-use items or only listed items? It seems that it is the broad interpretation that shall prevail, or at least, it is the most commonly accepted by Member States.

For the time being, **Austria, Belgium (Walloon Region and Flemish Region), Croatia, Czech Republic, Cyprus, Estonia, Finland, Greece, Hungary, Ireland, Luxembourg, the Netherlands, Romania and Spain** have introduced in their legislation the possibility to prohibit the transit of non-listed items for uses in “*connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons*” (Article 4(1)), as well as the option prohibiting the transit of listed items “*if the purchasing country or country of destination is subject to an arms embargo decided by a common position or joint action adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe (OSCE) or an arms embargo imposed by a binding resolution of the Security Council of the United Nations and if the exporter has been informed by the authorities referred to in paragraph 1 that the items in question are or may be intended, in their entirety or in part, for a military end-use*” (Article 4(2)).

4. The provisions of Article 8(2), (3) and (4) shall apply to the national measures referred to in paragraph 2 and 3 of this Article.

### **Comment:**

Article 8(2) to (4) establishes an obligation to notify to the Commission any measure and its modifications adopted under these provisions. Such measures should afterwards be published in the C series of the *Official Journal* of the EU.

## *Article 7*

### ***Article 7***

This Regulation does not apply to the supply of services or the transmission of technology if that supply or transmission involves cross-border movement of persons.

**Comment:**

As regards the cross-border movement of persons, see comment related to Article 2(2) iii.

A transmission of technical assistance by **oral means**, through cross-border movement of persons, is considered by the Joint Action (see Article 1 of the Joint Action). Nevertheless, the export of technology by intangible means, such as phone, email and fax, is covered by this Regulation.

## Article 8

1. A Member State may **prohibit** or impose an **authorisation** requirement on the export of dual-use items **not** listed in Annex I for reasons of public security or human rights considerations.

**Comment:** Some Member States require systematically an authorisation for items not listed in Annex I in application of Article 8 (see table below). None of the Member States has implemented Article 8 to impose an export prohibition of non-listed items.

**Austria**<sup>71</sup>, **Bulgaria**<sup>72</sup>, **Czech Republic**<sup>73</sup>, **Cyprus**<sup>74</sup>, **Estonia**<sup>75</sup>, **France**<sup>76</sup>, **Germany**<sup>77</sup>, **Ireland**<sup>78</sup>, **Latvia**<sup>79</sup>, **Luxembourg**<sup>80</sup>, **The Netherlands**<sup>81</sup>, **Romania**<sup>82</sup> and **Spain** have adopted a provision, in their national law, which is a governmental habilitation to extend, if necessary, the authorisation requirement on export of dual-use items not listed in Annex 1 for reasons of public security of human rights considerations.

Some Member States base certain catch-all authorisations/denials on this provision. **Italy** has followed that path in adopting a catch-all clause submitting to authorisation certain telecommunication items to Syria. It was the first formally published in the Official Journal of the European Union (OJ C 283/4, 19/9/2012).

<sup>71</sup> Article 20 of the 2011 Foreign Trade Act (Außenwirtschaftsgesetz 2011, BGBl. I Nr. 26/2011).

<sup>72</sup> Article 34(1), par. 3 The Export Control Act.

<sup>73</sup> Par. 3(1)(d) of the Act No 594/2004 Coll.

<sup>74</sup> Articles 5(3) and 10(c) of Ministerial Order 312/2009.

<sup>75</sup> Par. 2(11) and 6(2) of the Strategic Goods Act.

<sup>76</sup> Decree No 2010-292). National controls on exports of dual-use items have been adopted, as set out in following orders: Ministerial Order of 31 July 2014 concerning the export of certain helicopters and their spare parts to third countries, published in the *French Official Gazette* of 8 August 2014.

- Ministerial Order of 31 July 2014 on the export of tear gas and riot control agents to third countries, published in the *French Official Gazette* of 8 August 2014.

<sup>77</sup> Section 8 (1) Nr. 2 of the Foreign Trade and Payments Regulation (Aussenwirtschaftsverordnung — AWV)). The measure applies to specific National Numbers in the Export Control List (in 2013), corresponding with Category 2 (Materials processing), Category 5 (Telecommunications and “information security”), Category 6 (Sensors and lasers) and Category 9 (Aerospace and Propulsion).

The export authorisation requirement under Section 5(d) AWV for non-listed goods continues to apply in section 9 AWV.

Under Section 6 of the Foreign Trade and Payments Act (Aussenwirtschaftsgesetz — AWG), transactions, legal transactions and actions can be restricted or obligations to act can be imposed by administrative act in order to avert a danger pertaining in an individual case to the interests e.g. the essential security interests of the Federal Republic of Germany, the peaceful coexistence of nations, the foreign relations of the Federal Republic of Germany, the public order or security of the Federal Republic of Germany.

<sup>78</sup> Section 12 of Statutory Instrument 443 of 2009, Control of Exports (Dual-Use Items) Order 2009, as amended).

<sup>79</sup> Regulation of the Cabinet of Ministers No 645 of 25 September 2007 — ‘Regulation on the National List of Strategic Goods and Services’ (issued in accordance with the ‘Law on the Handling of Strategic Goods’, Article 3, Part One).

<sup>80</sup> Law, art. 43 (2)).

<sup>81</sup> Article 4 of the Decree for Strategic Goods — Besluit strategische goederen.

<sup>82</sup> Article 7 of the Emergency Order No 119 of 23 December 2010 (GEO No 119/2010) on the control regime for operations concerning dual-use items.

## Article 8

An authorisation may also be required for non-listed items on a national basis (see table related to Article 4).

**Table 8: Items submitted to a national export authorisation**

Country	Items submitted to an export authorisation
Belgium (Brussels)	Yes, some provisions are established by the arms Regulation ( <i>Ordonnance sur les armes</i> ).
Belgium (Walloon Region)	A prohibition is possible following a case-by-case assessment of criteria mentioned in article 12 of the Dual-Use Regulation.
Belgium (Flemish Region)	No.
Bulgaria	No.
Cyprus	The possibility to apply these measures exists, however so far, they have not been implemented.
Czech Republic	No.
France	<p>Certain telecommunication items.</p> <p>Certain helicopters and their spare parts (Ministerial Order of 31 July 2014 concerning the export, published in the <i>Official Journal of the French Republic</i> of 8 August 2014).</p> <p>Tear gas and riot control agents (Ministerial Order of 31 July 2014 to third countries, published in the <i>Official Journal of the French Republic</i> of 8 August 2014).</p>
Germany	The section 6 of the Foreign Trade and Payment Act is relevant for the implementation of Article 8(1) of the Regulation even if it is formally not based on this article. It is not an authorisation requirement but an enabling clause. It enables the Federal Ministry of Economics and Technology, with the consent of other Ministries, to impose a prohibition to any economic activity for a period of six months, if certain interests are endangered.

## Article 8

	<p>The following paragraphs of the Regulation implementing the Foreign Trade and Payment Act (AWV) are also relevant for the implementation of Article 8(1) of the Regulation:</p> <p><b>a.</b> § 5.2 in connection with certain items that are only controlled on a national basis for the protection of security and external interests as defined by Section 7.1 of AWG. Items concerned are listed in Part I section C of the numbering range 901 to 999 of the Export Control List (Annex AL);</p> <p><b>b.</b> § 5 c. authorisation is necessary for not listed items in connection with military end-use and for countries listed (country list K); This provision constraints also the exporter to inform its authorities if he is aware that the goods he intends to export are intended for a military end-use;</p> <p><b>c.</b> § 5 d. authorisation is necessary for not listed items in connection with a plant for nuclear purposes in destination of Algeria, India, Iran, Iraq, Israel, Jordan, Libya, North Korea, Pakistan, Syria. This provision constraints also the exporter to inform its authorities if he is aware that the goods he intends to export will be dedicated to uses mentioned in 5d.1.</p>
Ireland	Ireland does not have national list of items which require an export licence other than those specified in Council Regulation 428/2009.
Italy	<p>Public LAN database centralised monitoring system, internet and 2G/3G services including: communication flows drawing equipment, interface and mediation systems for the systems components, monitored flows processing server, monitored flows processing software, data filing storage, database management work station, database management software and LAN infrastructure to be exported to Syrian Telecommunication Establishment (STE) in Syria.</p> <p>In 2011, this export operation was stopped and put under a “catch more” provision.</p>
Latvia	<p>Annex to Regulation N 645 (national list of strategic goods and services) Categories of items concerned are: software, technology, military assistance, antipersonnel mines, rimfire weapons, air guns, pyrotechnical devices, tool, equipment and components designed or modified for special clandestine operations, night vision monoculars, binoculars and aiming sights and components.</p>
Luxembourg	The Grand-Duchy of Luxembourg has not yet issued a national export authorisation for dual-use items.
Poland	No.
Romania	No National control list.

## Article 8

Slovenia	No.
Spain	No.
Sweden	No.

2. Member States shall notify the Commission of any measures adopted pursuant to paragraph 1 immediately after their adoption and indicate the precise reasons for the measures.

3. Member States shall also immediately notify the Commission of any modifications to measures adopted pursuant to paragraph 1.

4. The Commission shall publish the measures notified to it pursuant to paragraphs 2 and 3 in the C series of the *Official Journal of the European Union*.

**Comment:**

The Commission publishes regularly such information on the C Series of the *Official Journal of the European Union* (Notices from Member States).

The latest publication can be found at:

[https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc\\_158576.pdf](https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158576.pdf)

## CHAPTER III EXPORT AUTHORISATION AND AUTHORISATION FOR BROKERING SERVICES

### Article 9

1. Union General Export Authorisations for certain exports as set out in Annexes IIa to IIc are established by this Regulation.

The competent authorities of the Member State where the exporter is established can prohibit the exporter from using these authorisations if there is reasonable suspicion about his ability to comply with such authorisation or with a provision of the export control legislation.

The competent authorities of the Member States shall exchange information on exporters deprived of the right to use a Union General Export Authorisation, unless they determine that the exporter will not attempt to export dual-use items through another Member State. The system referred to in Article 19(4) shall be used for this purpose.

In order to ensure that only low-risk transactions are covered by the Union General Export Authorisations included in Annexes IIa to IIc, the Commission shall be empowered to adopt delegated acts in accordance with Article 23a to remove destinations from the scope of those Union General Export Authorisations, if such destinations become subject to an arms embargo as referred to in Article 4(2). <sup>[11]</sup>Where, in cases of such arms embargoes, imperative grounds of urgency require a removal of particular destinations from the scope of a Union General Export Authorisation, the procedure provided for in Article 23b shall apply to delegated acts adopted pursuant to this paragraph.

#### **Comment:**

The European Union General Export Authorisation (EU GEA) is one of the essential elements of this Regulation. It constitutes a unique authorisation granted directly at the EU level. **It is important to note that, normally, no complementary national authorisation** will be necessary.

The new Regulation 1232/2011 has added **five new EU GEA** to the existing EU001 on export to certain countries (see Annex IIa). These new EU GEA concern:

- Exports of certain dual-use items to certain destinations (essentially Wassenaar Arrangement items and Participating Member States): Annex IIb;
- Export of dual-use item after repair or for maintenance and replacement: Annex IIc;
- Temporary transfer for trade fair or exhibition: Annex IId;
- Transfer of dual-use items dedicated to telecommunications and information security: Annex IIe;
- Transfer of chemical substances: Annex IIc.

It is worth to notice that the Council has made available, on 20 December 2018, the text of the *Commission's proposal for a Regulation of the European Parliament and the Council amending Council Regulation (EC) No 428/2009 by granting a Union General Export*

## Article 9

*Authorisation for the export of certain dual-use items from the Union to the United Kingdom of Great Britain and Northern Ireland* by granting a Union General Export Authorisation for the export of certain dual-use items from the European Union to the United Kingdom of Great Britain and Northern Ireland<sup>83</sup>. The proposal consists in adding the United Kingdom of Great Britain and Northern Ireland in the list of beneficiaries of the EU General Export Authorisation 001. The Regulation was adopted by Council and Parliament in co-decision on 27 March 2019<sup>84</sup> and will enter into force from the day following that on which the Treaties cease to apply to the United Kingdom, pursuant to Article 50(3) of the Treaty on European Union. However, this Regulation will not apply if a withdrawal agreement, concluded with the United Kingdom in accordance with Article 50(2) of the Treaty on European Union, has entered into force by that date.

It should be noted that a EU GEA on “low-value shipments” was initially proposed by the European Commission, but it was rejected by the Council. Nevertheless, two statements have been published jointly with the Regulation. One by the European Commission stating that *“the Commission intends to review this Regulation no later than 31 December 2013, in particular as regards assessing the possibility of introducing a General Export Authorisation on low-value shipments.”* Another one by the European Parliament, the Council and the European Commission stating that *“this Regulation does not affect the National General Export Authorisations on low value shipments issued by Member States in accordance with Article 9 (4) of Regulation 428/2009”*.

As latest developments on the review process of the EU dual-use Regulation (RECAST), on 17 January 2018, the European Parliament Plenary adopted the INTA report with an overwhelming majority in favour of the position set out in the report. 571 MEPs voted in favour, 29 against, and 29 abstained. Plenary also voted to open inter-institutional negotiations with the Council. The Council Working Party on Dual-Use Goods has adopted its views on the legislative proposal in December 2018. A consensus between the two co-legislators should be found before Spring to allow the text to be adopted under the present Commission. If not, it might be postponed for an indefinite period.

To use the EU GEA, the exporter has to respect a number of **specific conditions**, listed for each EU GEA in its dedicated Annex.

### **General conditions applicable to all EU GEA can be summed up as follows:**

1. An exporter cannot use an EU GEA if he or she has been informed by the national authorities that the items in question are or may be intended, in their entirety or in part, for a use in connection with weapons of mass destruction or for a military end-use as defined in Article 4(2) or if he or she is aware that the items are intended for such use.
2. An exporter cannot use an EU GEA when the relevant items are exported to a customs-free zone or free warehouse that is located in a destination covered by this authorisation.

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<sup>83</sup> Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 428/2009 by granting a Union General Export Authorisation for the export of certain dual-use items from the Union to the United Kingdom of Great Britain and Northern Ireland, 19.12.2018 COM(2018) 891 final 2018/0435 (COD). Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM%3A2018%3A0891%3AFIN>.

<sup>84</sup> The full text of the Regulation is available at [https://trade.ec.europa.eu/doclib/docs/2019/march/tradoc\\_157815.pdf](https://trade.ec.europa.eu/doclib/docs/2019/march/tradoc_157815.pdf).

## Article 9

3. Exporters shall mention the EU reference number of the EU GEA and specify the items being exported under the EU GEA in the box 44 of the Single Administrative Document (SAD).

4. Exporters that make use of an EU GEA shall notify to their national authorities the first use of the authorisation in a short delay after the first export took place or alternatively prior to the first use. Reporting requirements applied by the Member States are listed in the table 8 below.

5. The use of an EU GEA can be submitted to exporter's registration prior to the first use. Such registration shall be automatic and made known by the competent authorities to the exporter without delay and in any case within ten working days of the receipt. National registrations applied by Member States are listed in the table 9 below.

6. Notification or registration requirements have to be based on those defined for the use of national general export authorisation.

The use of an EU GEA can be constrained by other additional information, imposed by the national authorities.

### **Specific understandings and conditions requested for the use of certain EU GEA:**

#### **1. EU003 (Export after repair, replacement or for maintenance)**

- Repair, maintenance or replacement operations concern:

Items re-imported into the customs territory of the European Union for the purpose of maintenance, repair or replacement, and exported or re-exported to the country of consignment without any changes to their original characteristics within a period of five years after the date when the original export authorisation has been granted;

Items exported to the country of consignment in exchange for items of the same quality and number which were re-imported into the customs territory of the European Union for maintenance, repair or replacement within a period of five years after the date when the original export authorisation has been granted.

- Repair, maintenance or replacement operations may involve coincidental improvement on the original items, e.g. resulting from the use of modern spare parts or from use of a later built standard for reliability or safety reasons, provided that this does not result in any enhancement to the functional capability of the items or provide the items with new or additional functions;

- The exporter cannot use this authorisation if the initial authorisation has been annulled, suspended, modified or revoked;

- The exporter cannot use this authorisation if he is aware that the end use of the items is different from that specified in the original authorisation.

#### **2. EU004 (temporary export for exhibition or fair)**

- Exhibition or fair operations concern commercial events of a specific duration at which several exhibitors make demonstrations of their products to trade visitors or to the general public;

- The items have to be re-imported within a period of 120 days after the initial export, complete and without modification, into the customs territory of the EU;

- The competent authority of the Member State where the exporter is established may on

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request of the exporter waive the requirement that the items are to be re-imported;

- The exporter could not use the authorisation:

If he has been informed by a competent authority, or is otherwise aware (e.g. from information received from the manufacturer), that the items in question have been classified by the competent authority as having a protective national security classification marking, equivalent to or above CONFIDENTIAL UE;

Where their return, in their original state, without the removal, copying or dissemination of any component or software, cannot be guaranteed by the exporter, or where a transfer of technology is connected with a presentation;

Where the relevant items are to be exported for a private presentation or demonstration (e.g. in in-house showrooms);

Where the relevant items are to be merged into any production process;

Where the relevant items are to be used for their intended purpose, except to the minimum extent required for effective demonstration, but without making specific test outputs available to third parties;

Where the export is to take place as a result of a commercial transaction, in particular as regards the sale, rental or lease of the relevant items;

Where the relevant items are to be stored at an exhibition or fair only for the purpose of sale, rent or lease, without being presented or demonstrated;

Where the exporter makes any arrangement, which would prevent him from keeping the relevant items under his control during the whole period of the temporary export.

### **3. EU005 (telecommunications)**

- The exporter cannot use the authorisation for use in connection with a violation of human rights, democratic principles or freedom of speech as defined by the Charter of Fundamental Rights of the European Union, by using interception technologies and digital data transfer devices for monitoring mobile phones and text messages and targeted surveillance of internet use (e.g. via monitoring centres and lawful interception gateways);

- The exporter cannot use the authorisation if he or she is aware that the items will be re-exported to any destination other than the EU Member States, Australia, Argentina, Canada, China (including Hong Kong and Macao), India, Japan, New Zealand, Norway, South Africa, South Korea, Switzerland (including Liechtenstein), Turkey, Ukraine, and United States of America.

### **4. EU006 (chemicals)**

- The exporter cannot use the authorisation if he or she is aware that the items will be re-exported to any destination other than the EU Member States, Argentina, Australia, Canada, Iceland, Japan, New Zealand, Norway, South Korea, Switzerland (including Liechtenstein), Turkey, Ukraine, and the United States of America.

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**Table 9: Conditions of use of EU GEA imposed by Member States**

Member State	Conditions and requirements for use of this Authorisation	If registration is required, validity of the registration	Reporting requirements of the use of the EU GEA
Austria	Exporters have to register before the first use (Art. 59 Foreign Trade Act 2011).	Indefinite. However, an exporter can lose the right to use the EU GEA by being sentenced for a criminal offense.	Yearly reporting.
Belgium (Brussels)	Prior registration required.	Undetermined.	Yearly reporting.
Belgium (Flemish Region)	Prior registration required.	Until revocation.	Yearly reporting.
Belgium (Walloon Region)	Compulsory registration 10 working days prior to the first export.	Indefinite.	Yearly reporting obligation.
Bulgaria	Prior registration requirement for all exporters of dual-use items. Exporters that use the EU GEA No. EU001 shall notify the competent authorities of their first use of the EU GEA No. EU001 no later than 30 days after the date when the first export took place. Exporters that use EU GEA No. EU002 – EU006 shall notify the competent authority 10 days before the date when the first export took place and shall provide information on request.	The prior registration of exporters shall be done for a term of five years and every subsequent registration shall be done for the same term.	Report on use of the EU GEA has to be provided once per year (January).
Croatia	Exporters shall register at the Ministry of Foreign and European Affairs 20 days prior to the use of EU General Export Authorisation. The Ministry delivers, within 10 days to the exporter a confirmation of registration.	Prior registration required. Notification of the use of the EU GEA shall be made 20 days prior to the first export. The Ministry can prohibit the use of EU GEA and if the conditions for prohibition have been met, Ministry can decide	The Exporter and user of the EU General Export Authorisation is constraint to notify exports to the Ministry of Foreign and European Affairs twice a year.

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		on reuse of the EU GEA.	
<b>Czech Republic</b>	Prior registration required (confirmed by the Ministry within ten days of the application). Notification of the first use of the EU GEA no later than 30 days after the date when the first export took place.	Without time limit. If the exporter has not made any exports one year after the export has taken place, then the registration should be repealed.	On request of the Ministry.
<b>Cyprus</b>	Prior registration required. Requirement to notify the authorities of the first use of the EU GEA within 30 days after the first export take place.	Indefinite.	Requirement to notify the authorities of the first use of the EU GEA within 30 days after the first export take place.
<b>Denmark</b>	Requirement to notify the authorities of the first use of the EU GEA within 30 days after the first export.  Re-export clause imposes to ensure that the items would not leave the country of destination of Annex IIa Part 2 without authorisation.	Requirement to notify the authorities of the first use of the EU GEA within 30 days after the first export.	Documents have to be presented to authorities on request of the Ministry.
<b>Estonia</b>	In order to use (the national or Community) General Export Authorisation prior registration is required.	Up to the validity of the General Export Authorisation (indefinite).	Twice in a year, in July and January on the previous six months transactions, even if no export took place.
<b>Finland</b>	Exporters shall notify the Ministry for Foreign Affairs of the use of an EU General Export Authorisation no later than 30 working days after the date when the first export took place.		On request only.
<b>France</b>	Prior registration required. A document travels with the goods and is required for the custom declaration. Information available on the following website: <a href="http://www.dgcis.redressement-productif.gouv.fr/biens-">http://www.dgcis.redressement-productif.gouv.fr/biens-</a>	Until the “raison sociale” of the exporter is not modified.	Report on use of the EU GEA every 6 months for some types of items (cryptology).

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	double-usage/telechargements.		
Germany	<p>Exporters have to notify the first use of the respective EU GEA to the Federal Office of Economics and Export Control no later than 30 days after the date when the first export took place.</p> <p>In order to submit the notification, exporters need to register electronically. Further information on the following website:  <a href="http://www.ausfuhrkontrolle.info/ausfuhrkontrolle/de/antragstellung/agg_antragstellung/index.html">http://www.ausfuhrkontrolle.info/ausfuhrkontrolle/de/antragstellung/agg_antragstellung/index.html</a>  The exporter should enter "EU00X" in Box 44 of the custom declaration.</p>	<p>No time limit.  The registration is only used for internal purposes of German Authorities (e.g. statistical reasons).</p>	<p>Report on use of the EU GEA every 6 months (July and January).</p>
Greece	<p>On all related commercial documents should be mentioned that the exported goods are subject to the export control legislation of the EU (Reg. 428/2009) and are exported with simplified procedures.</p>	N/A.	No.
Hungary	<p>A prior registration is required, which incorporates the notification requirement.</p>	<p>Indefinite, but should be always up-to-date. If the exporter shows no activity for 5 years the registration will be automatically cancelled.</p>	<p>Reporting on the use of EU GEA on a six months basis.</p>
Ireland	<p>The conditions of use are as set out in EU GEA. There are no additional national conditions.</p>		
Italy	<p>A registration is made when an exporter informs the national Dual-Use Items Export Control Authority of his/her intention to use an EU GEA.</p>	<p>The registration is unlimited.</p>	<p>Within 30 days from the end of each calendar semester, the exporter shall send to the competent authority, by post, e-mail, or fax, a list of the</p>

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			export transactions made under the regime of the EU GEA. Such a notice shall contain the following information: entries of invoice and contract, quantity and value of the items; categories and sub-categories of reference, corresponding customs tariff section country of destination, particulars of the consignee and of the end-user, dispatch date, type of export (final, temporary, transit).
Latvia	No special form.		
Lithuania	Exporters shall notify the Ministry of Economy about the intention to use the EU GEA at least 10 working days prior to the first use of the authorisation.		After first use of the EU GEA no later than 30 days (EU GEA conditions Par.1)
Luxembourg	<p>The exporters who intend to use one or more general export authorizations in the Union, under Article 9 (1) of Regulation (EC) No 428/2009, shall register for these purposes with the Office not later than 10 business days before the first export covered by the Union's general export authorization is made (Law, art. 39 (1).</p> <p>Registration shall be effected by sending to the Export Control Office a standard</p>	Unlimited.	<p>The exporter shall provide the Export Control Office by 31 January of each year with information on exports made on the basis of the Union's general export authorization during the preceding year. This information, summarized by country, specifies for each recipient the following information:</p>

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	<p>form drawn up by the modified Grand Duke Regulation of the 14 December 2018 under Annex 17 Grand-Duke Regulation (Law, art. 39 (2). This regulation is still in the legislative process.</p> <p>In any case, the exporter undertakes to comply with the conditions of use laid down by the general export authorization of the Union as set out in Annexes IIa to IIc to Regulation (EC) No 428/2009 (Law, art. 39 (2)).</p>		<p>1. the description of the dual-use items and their references in the list in Annex I to Regulation (EC) No 428/2009;</p> <p>2. the quantity and value of the items exported;</p> <p>3. the dates of exports; and</p> <p>4. the end-use and the end-user of the items.</p> <p>When checking the information provided, the Export Control Office may request any other relevant document or any additional data relating to such exports (Law, art. 39 (3)).</p>
Malta	<p>30 days after the first use of the EU GEA. Same conditions and requirements as those set out in Annex II of this Regulation.</p>	<p>Not defined. Registration must be renewed if there is a change in address where records of the exports are kept.</p>	<p>No.</p>
Netherlands	<p>Prior registration required at least two weeks in advance of the first use. Reference EU00X to be made on documents. Input of the unique registration number and of code "EU00X" in the customs export control computer system "Sagitta" for any export.</p>	<p>No limit, no expiration dates. Unique registration number for each exporter assigned by government.</p>	
Poland	<p>Exporters are required to notify the first use of the respective EU GEA to the Economic Security Department no later than 30 days after the date when the first export took place. Prior notification of the intention to use. Mandatory certification (ISO-9001+internal compliance program).</p>	<p>Not defined.</p>	<p>Report on use of the EU GEA on a yearly basis.</p>

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Portugal	Prior registration required within 30 days after the date when the first export took place.		Yes, quarterly.
Romania	The National Authority sends to the exporter a registration number. The exporter shall: - Notify the National Authority the first use of EU GEA not later than 30 days from the date when the export takes place. - Send a report containing the export documents 10 days after the export took place. - Enter "X00X" and the registration number in Box 44 of the custom declaration. Other conditions for the use of the UGEA are laid down in the respective Annex IIa to g.	Without time limit.	The exporter shall send a monthly report containing the export data and documents upon request.
Slovakia	Registration of exporter before the first export.	If not used for two years, the exporter is removed from the register.	Exporter shall report on demand, in practice each export reports.
Slovenia	No registration requirement. Notification to the authorities of the first use of the EU GEA within 30 days after the first export.	There is not prior registration requirement.	Twice a year: until January for the second half of the previous year and until 15 July for the first half of the current year.

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Spain	Prior registration required.	No time limit.	Every six months.
Sweden	No prior registration required. No paper travels with the goods but reference to EU00X on customs declaration.	The notification has no time limit	Ex-post notification within 30 days after the first export.

**Table 10: EU GEA registration form, content and update imposed by Member States**

Member State	Registration form to be filled by exporter	Content of registration form	Update of registration form
Austria	No special form.	Registration form contains: Name, address of exporter who wants to make use of EU GEA, name and address of responsible person (not obligatory), identification of EU GEA, goods which are foreseen to be delivered, countries of consignees and end-users foreseen, declaration that conditions to use the EU GEA is known, signing.	A registration is required before additional EU GEAs are used. Additional items and destinations can be notified ex post in the yearly report.
Belgium (Flemish Region)	Online application via Digital Portal	Registration form allows exporter to indicate which EUGEA he wishes to register for.	
Belgium (Walloon Region)	Yes. Official document granted to an exporter.	See <a href="http://du-arms.brussels">website</a> : <a href="http://du-arms.brussels">http://du-arms.brussels</a>	A prior notification is required in case a new item is to be exported under EU GEA.

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Bulgaria	Yes. Official document granted to an exporter.	<p>A certificate is given to the exporter certifying that he is registered.</p> <p>Registration certificate includes the name of the registered person (legal or natural), number of trade registration, date of issuing and certain text information regarding the usage the certificate.</p>	Registered exporter shall notify the Interministerial Commission (Licencing Authority) of any changes in the information in the register within 14 days.
Croatia	No special form.		
Czech Republic	Registered letter of the company.	<p>Reference to this Regulation and to Act No 594/2004; Exporter's name; Exporter's registered office; Exporter's registration number; Name/position of statutory representative; Signature and stamp.</p> <p>The trade register certificate must be enclosed.</p>	<p>- The exporter shall notify the Ministry of any changes in the information in the register within fifteen days;</p> <p>- The exporter shall specify the number of the authorisation in the customs declaration;</p> <p>- The exporter shall apply to cancel the registration if, for a period of one year, he makes no use of the authorisation.</p>
Cyprus	<p>No special form provided.</p> <p>A register is kept at the Import and Export Licencing Unit of the Ministry of Commerce, Industry and Tourism.</p>	A letter is given to the exporter certifying that he is registered and entitled to use the EU GEA.	No.
Denmark	The usual form (Annex IIIa) must be used but only specific fields are to be filled out.	A letter is given to an exporter certifying that he is entitled to use the EU GEA.	The exporter does not have to report changes in use as long as they comply with the conditions of the EU GEA.

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Estonia	Yes.	<p>The registration application includes information on the company, their products range and countries involved.</p> <p>If registered, a written confirmation letter will be sent to the exporter. The letter contains information about the EU GEA, which they are registered to, information about the company and the conditions.</p>	An exporter shall notify the Strategic Goods Commission of any changes in the information contained in the register within five days, otherwise there will be a penalty.
Finland	Special form provided.	Company name and address and name of contact person in the company.	Every time when the data given to the licencing authorities was modified.
France	Special form provided (CERFA 14458-03).	<p>A letter must be attached, presenting the number of licences to be delivered and custom offices they are required for, as well as an excerpt of the national trade register.</p> <p>For category 5 items (National General Licence), one letter describing the customer and the quantities to be exported and a letter declaring the export of cryptology items are additionally required.</p>	
Germany	There is no form. The publication of EU00X is considered to be a licence; there are no licences granted.	There is no form.	Referring to Article 20 of this Regulation the exporter has to keep detailed record of their export transactions.
Greece	No special form except that all exporters must	N/A	N/A

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	be registered to the Special Registry of Exporters, prior to any export activity.		
Hungary	No special form provided: the license form is used as an application form.	Same as in the licenses, no other content required. Of course, other documents such as End-use certificate should be attached, and any other relevant document that supports the application (like orders, contracts, technical information, product description, etc.).	No such cases.
Ireland	There are no national requirements to register prior to the first use of an EU GEA.		
Italy	No special form.	No special registration form to be filled for applying. Exporter shall apply by a standard letter to National Authority to obtain the right to use the EU GEA. Exporter's application shall contain a signature of a legal representative of the firm and a copy of the trade register certificate. In the application a reference shall be made to Article 9 of Council Regulation (EC) 428/2009.	Exporters shall notify the Ministry of Foreign Affairs immediately of any change in information submitted.  (The Dual use Items Export Control Unit and the national Authority for dual use items export control were shifted by law from Ministry of Economic Development to Ministry of Foreign Affairs (Law No. 132 of 18 November, 2019).
Latvia	No special form.		
Lithuania	No special form.		
Luxembourg	Annex 17 of the modified Grand Duke Regulation of 14 December	Applicant, list of covered goods, destination countries, address of holding of registers,	At any change in the EU legislation.

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	2018 determines the registration form.	commitments.	
Malta	No special form.	Name of a person and the address at which the records are kept. Any changes of these elements should be notified within 30 days after such changes.	The Licencing Authority might impose additional conditions and requirements such as for example an end-use statement.
Netherlands	Special form provided.	Exporter declares intention to use EU001.	None.
Poland	No special form except the ISO certification mechanism.		
Portugal	No special form.		
Romania	There is no form.  The exporter should send a notification and, according to Annex II of the Council Regulation no. 428/2009, the Licencing Authority registers him in 10 working days.	The notification should contain:  - Reference to Council Regulation;  - Exporter's name; Exporter's registered office;  - Exporter's registration number;  - Name/position of statutory representative;  - Signature and stamp;  - Items (pieces, value, position in control list);  -End-user (identification data).  The trade register certificate must be enclosed.	The exporter shall notify the competent authority of any changes in the information included in the register within fifteen days.
Slovakia	No special form.		
Slovenia	No form. Exporters	The application for registration shall be specified: - Number EUGA (EU001...);	Exporters have to report any changes.

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	don't apply for this authorization.	- Company name, registered office and number register; - Extract from the commercial register.	
Spain	No application form to use EU GEA.		
Sweden	N.A.	N.A.	N.A.

2. For all other exports for which an authorisation is required under this Regulation, such authorisation shall be granted by the competent authorities of the Member State where the **exporter is established**. Subject to the restrictions specified in paragraph 4, this authorisation may be an individual, global or general authorisation.

**Comment:**

Considering that an **agency or a branch** of an **exporter** may be established in a Member State where the exporter's headquarters office is not located, the competent authority of a Member State where an agency or a branch of an exporter is established may grant an export authorisation to that agency, only if it is effectively involved in the proposed export. An agency or branch is effectively involved in a proposed export, *inter alia*, when it has **autonomous** decision-making powers on the contract underlying the export and has independent accounting system, when it has negotiated the contract and when it is able to discharge the exporter's obligations concerning export control regulations.

**Comment:**

The common understanding of different licences is the following:

An **individual licence** is granted to one specific exporter for one end-user, covering a number of items (one or several).

A **global licence/open individual licence** is granted to one specific exporter regarding a type or a category of dual-use items that may be valid for exports to one or more specified end-users, in one or more specified third countries (as defined by Article 2(10)).

A **national general authorisation** is valid for all national exporters to one or more specified countries, covering a number of determined items (as defined by Article 2(10) a model is proposed in Annex IIIc).

**Comment:**

Some Member States (**Austria, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Luxembourg, Slovenia, Slovakia, Spain and Sweden**) have established e-licencing systems. Not all of them issue electronic licences (**Denmark, Flemish Region, Latvia, the Netherlands**). **Italy** is currently developing its e-licencing system. In **Latvia**, application for the licence can be submitted remotely using e-mail and e-signature. In **Poland** the applications are introduced into the system in a traditional way, and since then the whole consultation's procedure (with 8 authorities) is done electronically.

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Transit operations are/will (be) cover(ed) by e-systems in: **Austria, Germany, Greece, Finland, Hungary, the Netherlands, Sweden and Slovakia.**

Brokering operations are/will (be) cover(ed) by e-systems in: **Germany, Finland, the Netherlands, Spain, Sweden and Slovakia.**

**Germany** provides for the possibility to apply for export and transfer licences electronically via BAFA (Federal Office of Economics and Export Control) online service ELANK-2 available at following website: [http://www.ausfuhrkontrolle.info/bafa/en/export\\_control/index.html](http://www.ausfuhrkontrolle.info/bafa/en/export_control/index.html). However, prior registration at BAFA website is required in order to use ELANK-2 licence application.

All the authorisations shall be valid throughout the Community.

### **Comment:**

This provision establishes one of the essential principles of this Regulation consisting in the recognition of the validity of a licence granted by another Member State. Normally, once the authorisation has been granted, the items can leave the EU, through any customs office (unless Member States have limited the procedure to dedicated customs offices (see Article 17)). If this principle is always applied for EU GEA, global and general national licences, for certain individual licences, a consultation might be required between the licencing authorities of Member States concerned (see Article 11).

It should be noted that the EU territorial validity concerns only export and brokering authorisations and not transit ones. Therefore, if a dual-use item has to pass through more than one Member State, it might be submitted to several transit authorisations.

Exporters shall supply the competent authorities with all relevant information required for their applications for individual and global export authorisation so as to provide complete information to the national competent authorities in particular on the end user, the country of destination and the end use of the item exported. The authorisation may be subject, if appropriate, to an end-use statement.

### **Comment:**

The content of the “**relevant information**” is requested and defined by the Member States’ authorities and may be listed and published.

End-use statement usually takes the form of an end-user certificate, which is a document issued by the recipient Government or by the recipient company. It contains information on the items transferred, on the exporter, on the consignee if involved, on the end-user, on the application authorised and finally a commitment of the recipient to not export or re-export the items without a prior consent of the initial exporting country. It should be noted that there is no official legally binding model for an end-user certificate. However, some international agreements, notably the Wassenaar Arrangement, gives a common understanding of the information to be included in this document.<sup>85</sup>

<sup>85</sup> The Wassenaar Guidelines concerning End-User certificate as updated in 2007 can be found at the following link: <https://www.wassenaar.org/app/uploads/2019/consolidated/10Statement-of-Understanding-on-Implementation-of-End-Use-Controls-for-Dual-Use-Items.pdf>.

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On 31 October 2008, the Council Working Party on Dual-Use Goods has adopted the best practice recommendations for elements of a Community end-use certificate. These non-legally binding recommendations were published in the C series of the *Official Journal of the European Union*; they contain information on the parties, the items and the commitments to be certified by the foreign consignee who might act as an end-user or as a trader, whole or reseller<sup>86</sup>. This document is published as an end-user certificate “model” which can be used directly by Member States’ authorities.

Another document, which might be required by Member States’ licencing authorities, is an international import certificate (IIC). It confirms not only the importer’s credentials, but also the fact that the import transaction involving strategic goods has been subject to control exercised by the competent authorities of a recipient State. It was initially established within the bounds of Co-Ordinating Committee (COCOM), an informal non-treaty organisation, established in 1949 to assist in efforts to control strategic exports to the Warsaw Pact Member States and China.

More precisely, under this procedure, importers are compelled to provide their foreign suppliers with an IIC that was validated by the importing government. This certificate asserts to the government of the exporter’s country that the items covered by it would be imported and would not be re-exported, except if authorised by export control regulations of importing country.

The requirement for an IIC is sometimes supplemented by the need for a delivery verification certificate.

A delivery verification certificate (DVC) implies that the customs services of importing country validate a certificate confirming that the items have entered the territory. This certificate is afterwards submitted by an exporter to the competent authorities of the exporting country.

Such IIC/DVC procedure is or can be required by several Member States, *i.e.* **Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia and Spain.**

If all Member States require an end-user certificate and quite often an IIC/DVC, a request for additional documents varies very much. Some Member States require an excerpt from a commercial register, or an undertaking of reliability checks in certain cases.

Common understanding regarding the additional documents to be provided by an applicant has not yet been adopted, but a majority of Member States requires the submission of an export contract, together with technical specifications of the goods to be exported.

### **Comment: Eligibility to apply for an export authorisation**

Using the term “**exporter**”, as defined by Article 2(3) of this Regulation, seems to limit the right of an exporter to apply for an export authorisation (global or individual). Whether Member States’ authorities can open such right to carriers and other intermediaries who might

<sup>86</sup> OJ C 11, 16/1/2009, p. 1. This document can be found at the following link:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:011:0001:0003:EN:PDF>.

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act on behalf of the exporter is not clear and the Member States seem not to allow such possibility.

3. Member States shall process requests for individual or global authorisations within a period of time to be determined by national law or practice.

**Comment:**

The initial regulation’s proposal of the Commission suggested that Member States should determine “*targets for the treatment of the requests of export authorisation within certain deadlines and communicate them to the Commission and national exporters*”. The objective was to increase a transparency of Member States’ decision-making process, by publishing different deadlines and therefore allowing exporters to refer such deadlines to their potential customers. It could have also contributed to counter the risk of unfair competition between EU exporters by inducing Member States to gradually harmonise their deadlines.

**Table 11: List of Member States which have adopted National General Authorisation**

Member State	Content of National General Licences	Publication reference
Austria	<p>There are four National General Export Authorisations in force for Austria:</p> <ul style="list-style-type: none"> <li>– AT001 for certain dual use items where they are re-exported to the originating country without modification, or where items of the same quantity and quality are exported to the originating country, or where technology is re-exported with minor additions, all within three months after their import into the European Union ;</li> <li>– AT002 for the export of certain dual-use goods below a certain value threshold;</li> </ul>	<p>The details of these authorisations are set out in Articles 3 through 3c of the First Foreign Trade Ordinance, BGBl. II No 343/2011 of 28 October 2011 as amended by Ordinance BGBl. II No 430/2015 of 17 December 2015. The conditions for their use (registration and notification requirements) can be found in Article 16 of the same Ordinance.</p>

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	<ul style="list-style-type: none"> <li>– AT003 for valves and pumps specified in entries 2B350g and 2B350i to certain destinations;</li> <li>– AT004 for frequency changers specified in entry 3A225 and related software and technology.</li> </ul>	
Belgium (Flemish Region)	Possibility of National General Licences existing but not used in practice.	Art. 4, 1 <sup>st</sup> indent of the Decision of the Flemish Government of 14 March 2014.
Belgium (Brussels)	No.	
Bulgaria	<p>The Export Control Act provides possibilities to use a national general authorisation for export of dual-use items, according to Article 45 of the Export Control Act. The national general authorisation is published on the web page of the Ministry of Economy.</p> <p>When publishing a national general export authorization, the Interministerial Commission informs exporters that the authorisation may not be used when the items are or may be intended in whole or in part for use in the cases under article 4, paragraphs 1-5 of Regulation (EC) No. 428/2009.</p>	Article 45, paragraph 6 and 7 of Defence-Related Products and Dual-Use Items and Technologies Export Control Act.
Croatia	A National General Export Authorisation for the export of dual-use items in accordance with Article 9(4) of the Regulation may be issued by the Ministry of	Act on Control of Dual-Use Items (OG 80/11 i 68/2013).

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	Foreign and European Affairs	
Czech Republic	Legislation offers necessary framework for National General Licence but none have yet been issued.	Article 6 of Act No 594/2004 of 4 November 2004.
Estonia	Legislation offers necessary framework for National General Licence but none have yet been issued.	Estonian Act on Strategic Goods, December 22.2011.  English version of Estonian national export control legislation is available on the following website: <a href="https://www.riigiteataja.ee/en/eli/515112013010/consolide">https://www.riigiteataja.ee/en/eli/515112013010/consolide</a>
Finland	Legislation offers necessary framework for National General Licence but none have yet been issued.	Section 3, Paragraph 1 of Dual Use Act No. 562/1996 (as amended).
France	Six National General Licences:  1. Chemicals (1C350.2, 1C.350.7, 1C.350.9, 1C350.38, 1C350.46);  2. Biological items;  3. Graphite (0C004);  4. Industrial items.  5. Certain dual-use items for French armed forces in third countries  6. Export or transfer within the EU of certain dual-use items for exhibition or fair.	1. Official Journal of the French Republic No 176 of 30 July 2002 (text 12) and Official Journal of the French Republic of 31 July 2004 (text 6).  2. Official Journal of the French Republic of 20 March 2010.  3. Official Journal of the French Republic No 176 of 30 July 2002 (text 13) and Official Journal of the French Republic of 31 July 2004 (text 7).  4. Official Journal of the French Republic No 176 of 30 July 2002 (text 11) and Official Journal of the French Republic of 31 July 2004 (text 5).  5. Ministerial Order of 31 July 2014, published in the Official Journal of the French Republic of 8 August 2014).  6. Ministerial Order of 31 July 2014 published in the Official Journal of the French Republic of 8 August 2014.
Germany	5 Dual-use National General Licences (AGG): - AGG No 9 Graphite	Federal Gazette No 72 of 16.04.2005, p 6289f.  As German National General Licences are subject to yearly modifications, current version is available on the

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	<p>and certain finished products from graphite;</p> <ul style="list-style-type: none"> <li>- AGG No 12 Items of Annex I of EC REG 1334/2000 having a value of less than €2,500, except all positions of the categories d and e and items of the “Very Sensitive List” of WA;</li> <li>- AGG No 13 Items of Annex I of EC REG 1334/2000 except in certain (non-sensitive) cases<sup>87</sup>;</li> <li>- AGG No 16 Goods and Technology in the area of telecommunications;</li> </ul> <p>All National General Licences do not cover items specified in Annex IIg or countries subject to an arms embargo<sup>88</sup>.</p>	<p>website <a href="http://www.bafa.de">http://www.bafa.de</a>.</p>
<p>Greece</p>	<p>A National General Export Authorisation applies for export of certain dual-use items to the following destinations: Argentina, Croatia, Republic of Korea, Russian Federation, Ukraine, Turkey and South Africa.</p>	<p>Ministerial Decision No 125263/e3/25263/6-2-2007</p>
<p>Hungary</p>	<p>The legislation offers necessary legal framework for issuing National General Licences but none have been issued so far.</p>	<p>No NGA in force, but the possibility of issuing is substantiated with (Para. 11 of Government Decree No 13/2011 (II.22) on foreign trade licensing of dual-use items).</p>

<sup>87</sup> NGEA’s No. 12 and 13 do not cover exports of specific items concerning (cyber) surveillance technology.

<sup>88</sup> Since Russia is subject to arms embargo the NGEA’s No. 9, 12, 13 and 16 must not be used for Russia.

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Italy	A National General Export Authorisation applies for export of certain dual-use items to the following destinations: Antarctica (Italian bases), Argentina, Republic of Korea, Turkey.	Decree of 4 August 2003 published in the Official Journal No 202 of 1 September 2003.
Ireland	Not provided for in national legislation.	
Latvia	Yes.	
Luxembourg	<p>The Grand-Duchy of Luxembourg has not yet established national general authorisations.</p> <p>Luxembourg law provides that a general national export authorization of indefinite duration may be issued and used in accordance with the provisions of Article 9 (4) of Regulation (EC) No 428/2009. The general national export authorization shall indicate, without prejudice to the indications referred to in the fourth subparagraph of Article 16 (1), the goods and destinations to which it applies, and the elements listed in Annex IIIc of the Regulation (EC) No 428/2009. General export authorizations will be published by the Ministers on the websites of their ministries and in the Official Journal of the Grand Duchy of Luxembourg (Law, art. 41 (1)).</p>	
Netherlands	A National General Export Authorisation applies for export of certain dual-use	(National General Authorisation NL002 — Nationale Algemene Uitvoervergunning NL002)

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	<p>items to all destinations, with the exception of:</p> <ul style="list-style-type: none"> <li>– Australia, Canada, Japan, New Zealand, Norway, USA, Switzerland (which are covered already by Annex II Part 3 to Regulation (EC) No 428/2009);</li> <li>– Afghanistan, Burma/Myanmar, Iraq, Iran, Libya, Lebanon, North Korea, Pakistan, Sudan, Somalia and Syria.</li> </ul>	
Poland	Legislation offers necessary framework for National General Licence but none have been issued.	Law of 29 November 2000.
Romania	Legislation offers necessary framework for National General Licence.	Government Ordinance no.119/2010 on the control of the operations with dual use goods.
Slovakia	Yes, but none have been issued.	National general licence is defined by Act no. 39/2011.
Slovenia	N/A	N/A
Spain	No.	
Sweden	SE has not established any national general authorizations yet. However; the government or an authority appointed by the government can establish such authorizations.	Article 6 Swedish Act (2000:1064) on the Control of Dual-use Items and Technical Assistance.

4. National general export authorisations shall:
- (a) exclude from their scope items listed in [Annex IIg](#);

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### Comment:

Items concerned by this provision are items which cannot be covered by an EU GEA. Hence, it was considered that national general licences could not be granted for such items either.

(b) be defined by national law or practice. They may be used by all exporters, established or resident in the Member State issuing these authorisations, if they meet the requirements set in this Regulation and in the complementary national legislation. They shall be issued in accordance with the indications set out in Annex IIIc. They shall be issued according to national laws and practice;

Member States shall notify the Commission immediately of any national general export authorisations issued or modified. The Commission shall publish these notifications in the C series of the *Official Journal of the European Union*;

(c) not be used if the exporter has been informed by his authorities that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in paragraphs 1 and 3 of Article 4 or in paragraph 2 of Article 4 in a country subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the OSCE or to an arms embargo imposed by a binding resolution of the Security Council of the United Nations, or if the exporter is aware that the items are intended for the abovementioned uses.

### Comment:

Uses referred to in paragraphs 1, 2 and 3 of Article 4 are:

- Contribution to development, production, handling, operation, maintenance, storage, detection, identification or dissemination of **chemical, biological or nuclear** weapons or other nuclear explosive devices or development, production, maintenance or storage of **missiles** capable of delivering such weapons;
- Final destination is subject to an **arms embargo** decided by the EU Council of Ministers or by the OSCE or by a binding resolution of the UN Security Council and if exported items have to be used for military purposes;
- Use as parts or components of military items listed in a national military list that have been exported from the territory of that Member State **without authorisation or in violation of an authorisation** imposed by national legislation of that Member State.

5. Member States shall maintain or introduce in their respective national legislation the possibility of granting a **global export authorisation**.

### Comment:

The global authorisation is defined in Article 2(10).

**Table 12: List of Member States which have established a possibility to issue Global Export Authorisation**

Member State	Global Licence
Austria	X
Belgium (Flemish Region and Brussels)	X
Bulgaria	X
Croatia	X
Cyprus	X
Czech Republic	X
Denmark	X
Estonia	X
France	X
Finland	X
Germany	X
Greece	X
Hungary	X
Ireland	X
Italy	X
Latvia	X
Lithuania	X (not granted yet)
Luxemburg	X
Malta	X (not granted yet)
Netherlands	X
Poland	X
Portugal	X (not granted yet)
Romania	X
Slovakia	X (not granted yet)
Slovenia	X (not granted yet)
Spain	X
Sweden	X

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Table 13: Restriction on use of National General or Global Export Authorisations

Member State	Restriction on use of National General or Global Export Authorisations
Austria	None. Restrictions are possible. Global licences are handled on a case-by-case basis (Art. 60 Foreign Trade Act 2011 ee n 11).
Belgium (Flemish Region)	Global export authorisations are always restricted to civil end use and civil end-users. Additional limitations can be included depending on the items, exporter and destination countries. These limitations can be with regards to the allowed end use, and/or the (nature of) allowed consignees or end users.
Belgium (Brussels)	Limitation for nuclear goods: only individual licences.
Bulgaria	National general licence can be used by registered exporters without any restrictions. According to art. 35(4) of Regulation on implementation of Defence-Related Products and Dual-Use Items and Technologies Export Control Act to apply for global export licence the applicant shall submit a document certifying that for the previous year and for the next year not less than 10 exports of dual-use items to those consignees will be organized.
Croatia	None.
Cyprus	There are no specific provisions in the legislation, however the Licensing Office may set any terms or restraints on the licenses.
Czech Republic	Access to global export authorisation is not restricted. There is only one specific condition: the applicant must prove that he or she is capable to respect the requirements under national trade control regime (e.g. checking the end use of individual supplies). If this condition is not met, the exporter is entitled to submit an application for an individual export authorisation.
Denmark	Yes.
Estonia	Authorisations cannot be used in connection with WMD-related end-use and goods destined for embargoed countries.
France	None.
Finland	Usually a “certain flow” of exports has to be produced as an indication of the usefulness of such facilitation, or forthcoming exports.
Germany	Export licences could be denied in case of unreliability (sect. 8.2 AWG). Possibility to revoke a National General Licence for individual exporters.

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<b>Hungary</b>	<p>The exporter should be registered by the authority for all licenses.</p> <p>Global Export Authorisation cannot be issued for the WMD-related end-use, or for embargoed destinations. Besides, the applicant should be considered as a reliable exporter (at least 1 year of experience) and there should be a certain reason for applying (e.g. multiple individual licences) and a well-functioning ICP should underpin the reliability.</p>
<b>Ireland</b>	<p>A Global Licence cannot be used for exports to military or police end-users or any State (including but not limited to Interior Ministry activities), national or sub national security forces, or end-users whose subsidiaries, affiliates or associated companies are involved in military, police or State (including but not limited to Interior Ministry activities), national or sub national security related activities.</p> <p>The licence is subject to quarterly reporting requirements.</p>
<b>Italy</b>	<p>In principle, the penalty for infringement of the dual-use law (both community and national) may reflect on the assessment and release of all kinds of licences existing in the Italian system: individual, global, national general, community general (see Legislative Decree no. 221/2019, art. 18).</p>
<b>Latvia</b>	<p>It cannot be used for military end-users, and if military conflicts are taking place in the end-user's country. If the exporter is aware that the goods might be used for production, development, use and delivery of WMD's.</p>
<b>Lithuania</b>	<p>There are specific licencing rules that set up grounds for suspension or even revocation of export licences.</p>
<b>Luxembourg</b>	<p>Restrictions on the use of general authorizations shall be determined by the authorizations.</p> <p>Global authorization may set value and quantity limits to which the authorization applies (Law, art. 40 (1)). The global authorization may be used by the operator who fulfils the conditions indicated in such authorization, to carry out operations on goods covered by this law. It shall cover, for its period of validity, the export, transfer, import or transit of the goods identified, without quantity or amount (Law, art. 16 (1)).</p> <p>The period of validity of the authorizations granted shall be three years for global and general authorizations (Law, art. 13 (1)). The global and general authorizations are renewable, under the same conditions, for a new period of eighteen months (Law, art. 13 (1)).</p>
<b>Poland</b>	<p>General Licences and the Community General Export Licences may be used by any natural or legal person being able to provide relevant documentation to confirm the maintain of the internal compliance system during the past three years. In addition, an exporter should submit a statement to the licencing authority defining an intention and a starting date of intended trade.</p>

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Romania	<p>There are no restrictions.</p> <p>General Licences and the Community General Export Licences may be used by any natural or legal person that is able to provide relevant documentation to confirm the implementation of the internal compliance programme and the management of export controls for the past three years, and that submits a statement to the licencing authority defining the intention and starting date of intended trade.</p>
Slovakia	National global authorisations – Expiry date, max. 3 years.
Slovenia	<p>Global export authorisation is available to all exporters under certain conditions. Proportionate and adequate means and procedures to ensure compliance: type of dual use goods, frequency of export on annual basis, individual export authorisations to this exporter in previous years, long term of export business, destination country/ countries and compliance by the exporter.</p>
Spain	<p>Global licences are limited to:</p> <p>a) parent company and one of its subsidiaries or between subsidiaries;</p> <p>b) between the manufacturer and exclusive distributor and</p> <p>c) a regular commercial flow between the exporter and the end user.</p>
Sweden	<p>None, but the ISP takes into consideration the application by the exporter of proportionate and adequate means and procedures to ensure compliance with the provisions and objectives of the dual-use regulation and with the terms and conditions of the authorization, therefore; a global export license is normally preceded by a compliance visit by the ISP to the applying exporter.</p>

6. Member States shall supply the Commission with a list of the authorities empowered to:
- (a) grant export authorisations for dual-use items;
  - (b) decide to prohibit the transit of non-Community dual-use items under this Regulation.

The Commission shall publish the list of these authorities in the C series of the *Official Journal of the European Union*.

**Comment:**

The list of Member States' licencing authorities is regularly published in the *Official Journal of the European Union* as an Information note on Council Regulation (EC) No. 428/2009. The list is also available on the website of the DG Trade at the following address:  
[https://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154880.pdf](https://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154880.pdf)

## Article 10

1. Authorisations for brokering services under this Regulation shall be granted by the competent authorities of the Member State where the broker is resident or established. These authorisations shall be granted for a set quantity of specific items moving between two or more third countries. The location of the items in the originating third country, the end-user and its exact location must be clearly identified. The authorisations shall be valid throughout the Community.

2. Brokers shall supply the competent authorities with all relevant information required for their application for authorisation under this Regulation for brokering services, in particular details of the location of the dual-use items in the originating third country, a clear description of the items and the quantity involved, third parties involved in the transaction, the third country of destination, the end-user in that country and its exact location.

**Comment:**

The content of “**relevant information**” is requested and defined by Member States’ authorities and may be listed and published. A common understanding of the information to be provided, beyond those prescribed by the Regulation, by an applicant has not yet been adopted.

3. Member States shall process requests for authorisations for brokering services within a period of time to be determined by national laws or practice.

**Comment:**

This paragraph has been included to increase a transparency as well as to allow exporters to anticipate the time necessary in different Member States to obtain an answer, if the intended brokering activities must be submitted to authorisation. The initial proposal of the Commission included a provision that constrained Member States’ authorities to reply within a delay of 20 working days from the presentation of a complete licence application by the broker. Such proposal did not obtain the necessary majority within the Council.

The initial proposal of the Commission included also an obligation for the Member States to inform the Commission of such delays, which had to be published in the *Official Journal of the European Union*. The Council did not endorse such proposal either.

4. Member States shall supply the Commission with a list of the authorities empowered to grant authorisations under this Regulation for the provision of brokering services. The Commission shall publish the list of these authorities in the C series of the *Official Journal of the European Union*.

**Comment:**

The list of the national authorities of the Member States is to be published in the *Official Journal of the European Union* as Information note on Council Regulation (EC) No. 428/2009.

The list has been published in the *Official Journal of the European Union* and is available at the following address: [https://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154880.pdf](https://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154880.pdf).

## Article 11

### Comment:

This provision alters the principle of mutual recognition of a licence granted by other Member States, by establishing an obligation of consultation between the Member State that issues a licence (the State where the exporter is established) and the Member State where an item is or will be located. This provision concerns only a limited number of items submitted to individual licences:

- All items of Annex IV for any destination;
- All items of Annex I for a destination other than Australia, Canada, United States of America, Japan, Norway, New Zealand, Switzerland (Annex IIa)<sup>89</sup>.

It should be noted that the decision of a Member State consulted **binds** the decision of the Member State where that application has been made. Thus, a negative answer imposes the denial of the authorisation.

1. If the dual-use items in respect of which an application has been made for an individual **export** authorisation to a destination **not** listed in Annex IIa or to **any** destination in the case of dual-use items listed in **Annex IV** are or will be **located** in one or more Member States other than the one where the application has been made, that fact shall be indicated in the application. The competent authorities of the Member State to which the application for authorisation has been made shall **immediately consult** the competent authorities of the Member State or States in question and provide the relevant information. The Member State or States consulted shall make known within 10 working days any objections it or they may have to the granting of such an authorisation, which shall **bind** the Member State in which the application has been made.

### Comment:

The terms “are or will be located” of this paragraph should be understood as requiring a consultation between Member States in the following cases:

- If an item is located in another Member State, when the exporter applies for an authorisation;
- If an item will be located in another Member State, before leaving the EU territory for reasons like: some finishing has to be done on the item, or it constitutes a subsystem of a (non)listed item and will be integrated into it, or destination might change, or an active processing should be done on it.

If no objections are received within 10 working days, the Member State or States consulted shall be regarded as having no objection.

In exceptional cases, any Member State consulted may request the extension of the 10-day period. However, the extension may not exceed 30 working days.

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<sup>89</sup> UK and Northern Ireland are added to this list of countries, following the entry into force of Regulation (EU) No. 2019/496 of the European Council and of the Parliament of 27 March 2019 *amending Council Regulation (EC) No 428/2009 by granting a Union general export authorisation for the export of certain dual-use items from the Union to the United Kingdom* (Official Journal L851/20, 27/3/2019).

## Article 11

2. If an export might prejudice its **essential security interests**, a Member State may request another Member State **not to grant** an export **authorisation** or, if such authorisation has been granted, request its annulment, suspension, modification or revocation. The Member State receiving such a request shall immediately engage in consultations of a non-binding nature with the requesting Member State, to be terminated within 10 working days. In case the requested Member State decides to grant the authorisation, this should be notified to the Commission and other Member States using the electronic system mentioned in Article 13(6).

**Comment:** Contrary to the provision of paragraph 1, the consulted Member State is free to grant or maintain the authorisation, once a consultation has been achieved.

The term “**essential security interests**” was not defined; it is therefore left to the judgement of the Member States.

This concept is also used by the General Tariff and Trade Agreement (World Trade Organisation) in its Article XXI in order to allow participating States adopting restrictive measures. The interpretation of “essential security interest” which constraints the use of article XXI (a) (information) and (b) (fissile material, implement of war and emergency) to adopt national restrictive measures have been discussed more than once within various WTO fora. Nevertheless, States Parties never succeeded to endorse a common understanding. In 1961, Ghana adopted a ban on import of Portuguese goods which was motivated “*under the provisions of Article XXI: (b)(iii), noting that ‘under this Article each contracting party was the sole judge of what was necessary in its essential security interests’ (SR.19/12, page 196). The statement of Ghana on the invocation of Article XXI was noted by the Contracting Parties*”<sup>90</sup>. Similar embargo and boycott decisions adopted by Egypt against Israel (1970), by EU Member States, Australia and Canada against Argentina (1982), by United States against Cuba (1962) and Nicaragua (1985) have been motivated by the defence of “essential security interests”. The reason might be due to a jurisdictional argument as yet unresolved and “*relied more than once by the United States – that the phrase ‘it considers necessary’ in the chapeau of paragraph (b) means that a country’s decision to take action on national security ground under XXI: 1(b) cannot be challenged in the dispute resolution system*”<sup>91</sup>.

As regards the conformity of measures adopted by States with the spirit of article XXI, the issue has been discussed once when, in 1975, Sweden introduced a global import quota system for certain footwear. “*The Swedish Government considered that the measure was taken in conformity with the spirit of Article XXI and stated, inter alia, that the “decrease in domestic production has become a threat to the planning of Sweden’s economic defence in situations of emergency as an integral part of its security policy. This policy required the maintenance of a minimum domestic production capacity in vital industries” (L/4250). In the Council “many representatives expressed doubts as to the justification of these measures under the General Agreement” (C/M/109)*”<sup>92</sup>.

Therefore, States appear to be rather free to define what might fall under their national security interests.

<sup>90</sup> Article XXI note by the Secretariat, 18 August 1987 (MTN.GNG/NG7/W/16), page 5.

<sup>91</sup> Alan S. Alexandroff and Rajeev Sharma, *The World Trade Organization: Legal, Economic and Political Analysis*, Springer US, 2005, p.1575.

<sup>92</sup> Article XXI note by the Secretariat, 18 August 1987 (MTN.GNG/NG7/W/16), page 6.

## Article 12

1. In deciding whether or not to grant an individual or global export authorisation or to grant an authorisation for brokering services under this Regulation, the Member States shall take into account all **relevant considerations** including:

(a) The **obligations and commitments** they have each accepted as members of the relevant international **non-proliferation regimes** and export control arrangements, or by ratification of relevant international treaties;

(b) Their obligations under **sanctions** imposed by a **decision or a common position** adopted by the Council or by a decision of the OSCE or by a binding resolution of the Security Council of the United Nations;

(c) Considerations of **national foreign and security policy**, including those covered by the Council Common Position 2008/994/CFSP defining common rules governing control of exports of military technology and equipment<sup>93</sup>;

(d) Considerations about intended **end use and the risk of diversion**.

### Comment:

In order to grant or not an authorisation, Member States assess their decisions on the basis of two types of considerations, which are conditions and criteria.

**Conditions** are **objective elements** that recipient countries have to meet to obtain an export authorisation from the supplier. Those elements can be a ratification of a treaty, a conclusion of a safeguards system or a submission of an end-user certificate.

**Criteria** are **subjective elements** to be considered by the supplier State, through a case-by-case analysis, in order to authorise or not a transfer. Criteria can be an internal situation in the country of final destination, existence of tensions or armed conflicts and a risk that the recipient country would use the proposed export aggressively against another country or to assert by force its territorial claim.

Article 12 establishes a non-exhaustive list of **criteria** to be taken into consideration by Member States' authorities, while assessing an opportunity to grant or not an export authorisation.

Cross reference to the Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of export of military technology and equipment is made in this Regulation. Shall Member States then take into consideration, when assessing an application, the eight criteria of the Common Position? If, politically, such mechanism might be considered, the Common Position cannot formally extend either the Member States' obligation to consider such criteria in the consultation mechanism for an essentially identical transaction previously denied established by Article 13(5) or the criteria list set up by Article 12.

This list is a summary of conditions and criteria adopted by the **five international export control regimes**. In this regard, one should refer to each export control regime to have an accurate list of conditions and criteria by category of dual-use items.

For the States Parties to the **Chemical Weapons Convention**, a note (Note 2 under 1C350)

<sup>93</sup> OJ L 335, 13/12/2008, p. 99.

has been added in Annex I exempting from export authorisation the transactions involving chemical mixtures containing one or more of the chemicals specified in certain entries in which no individually specified chemical constitutes more than 30% by the weight of the mixture.

### **Nuclear dual-use items**

The **Nuclear Suppliers Group (NSG)** has adopted two groups of guidelines. The first set of guidelines governs the export of items that are especially designed or prepared for nuclear use (trigger list)<sup>94</sup>. The second one rules the export of nuclear-related dual-use items and technologies, which are items that are normally destined for a non-nuclear use; however, in certain circumstances they could also make a major contribution to an unsafeguarded nuclear fuel cycle or nuclear explosive activity<sup>95</sup>.

NSG guidelines impose an obligation to submit to a national export authorisation all items listed in both trigger and dual-use lists. Whereas both guidelines do not include a formal prohibition, suppliers are invited to adopt a restrictive policy regarding transfers of **sensitive items** especially if active denials have been issued by one or more NSG supplier States. Sensitive items are defined rather broadly as items “*usable for nuclear weapons or other nuclear explosive devices*”

In principle, exports to nuclear-weapon States are prohibited except to five States recognised as such by the Nuclear Non-Proliferation Treaty (China, France, Russia, United Kingdom and United States of America). Since September 2008, an additional exception has been included in the NSG Guidelines authorising transfers of all items listed in the trigger and the dual-use lists to India<sup>96</sup>.

While deciding whether or not to authorise a transfer, supplier States should examine the licence application for a trigger list items in the light of the **non-proliferation principle**, which invites suppliers to authorise a transfer only when they are satisfied that it would not contribute to the proliferation of nuclear weapons or other nuclear explosive devices or would not be diverted to an act of nuclear terrorism.

Suppliers should also **refuse a transfer** if there are potential **risks of retransfer** due to the **failure** of the Recipient State to develop and maintain appropriate and effective national export and transshipment controls as identified by UNSCR 1540.

*Complementary, Suppliers should exercise a policy of restraint in the transfer of sensitive facilities, equipment, technology and material usable for nuclear weapons or other nuclear explosive devices, especially in cases when a State has on its territory entities that are the object of active NSG Guidelines Part 2 denial notifications from more than one NSG Participating Government.*<sup>97</sup>

Different criteria, which should be considered in connexion with the non-proliferation principle, are defined for nuclear dual-use items. These criteria are:

“ (a) *Whether the recipient State is a party to the Nuclear Non-Proliferation Treaty (NPT) or*

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<sup>94</sup> INFCIRC/254/Rev.12/Part 1 Communications Received from Certain Member States Regarding Guidelines for the Export of Nuclear Material, Equipment and Technology.

<sup>95</sup> INFCIRC/254/Rev.9/Part 2 Communications Received from Certain Member States Regarding Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials, Software and Related Technology.

<sup>96</sup> For more details, see INFCIRC/734(corrected).

<sup>97</sup> INFCIRC/254/Rev.12/Part 1 Communications Received from Certain Member States Regarding Guidelines for the Export of Nuclear Material, Equipment and Technology, point 6.

## Article 12

*to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco), or to a similar international legally binding nuclear non-proliferation agreement, and has an IAEA safeguards agreement in force applicable to all its peaceful nuclear activities;*

*(b) Whether any recipient State that is not party to the NPT, Treaty of Tlatelolco, or a similar international legally-binding nuclear non-proliferation agreement has any facilities or installations listed in paragraph 3(b) above that are operational or being designed or constructed that are not, or will not be, subject to IAEA safeguards;*

*(c) Whether the equipment, materials, software, or related technology to be transferred is appropriate for the stated end-use and whether that stated end-use is appropriate for the end-user;*

*(d) Whether the equipment, materials, software, or related technology to be transferred is to be used in research on or development, design, manufacture, construction, operation, or maintenance of any reprocessing or enrichment facility;*

*(e) Whether governmental actions, statements, and policies of the recipient State are supportive of nuclear non-proliferation and whether the recipient State is in compliance with its international obligations in the field of non-proliferation;*

*(f) Whether the recipients have been engaged in clandestine or illegal procurement activities; and*

*(g) Whether a transfer has not been authorised to the end-user or whether the end-user has diverted for purposes inconsistent with the Guidelines any transfer previously authorised; and*

*(h) Whether there is a reason to believe that there is a risk of diversion to acts of nuclear terrorism.*

*(i) Whether there is a risk of retransfers of equipment, material, software, or related technology identified in the Annex or of retransfers of any replica thereof contrary to the Basic Principle, as a result of a failure by the recipient State to develop and maintain appropriate, effective national export and transshipment controls, as identified by UNSC Resolution 1540<sup>98</sup>.*

Before granting an authorisation, a supplier State should also verify if a recipient State fulfils the scope of **export conditions** defined by the NSG guidelines. These conditions are different for trigger list items and dual-use items.

### **Conditions of supply for NSG trigger list items**

The first condition of supply for trigger list items concerns an obligation for a Recipient State to bring into force an agreement with the IAEA requiring the application of **safeguards** on all sources and special fissionable material in its current and future peaceful activities (Comprehensive Safeguards Agreement (CSA)). This condition contains one exception for transfers to non-nuclear-weapon States when they are deemed essential for the safe operation of existing facilities and only if safeguards are applied to those facilities. Before granting such authorisation, suppliers should inform and, if appropriate, consult in case they intend to authorise or to deny such transfers. This exception has been used twice by Russia to supply fissile material for a nuclear power plant to India in 2000 and 2006.

Even if currently an Additional Protocol does not constitute an NSG Guidelines' condition of supply for all trigger list items, it is presently required by all EU Members States.

The second condition of supply for trigger list items concerns the submission of four types of

<sup>98</sup> INFCIRC/254/Rev.9/Part 2 Communications Received from Certain Member States Regarding Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials, Software and Related Technology, Establishment of Export Licensing Procedures, Point 4.

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### **government-to-government assurances:**

- The first is a commitment of the recipient State to explicitly **exclude** any use which would result in any **nuclear explosive device**.
- The second concerns a retransfer management. In this regard, suppliers should transfer trigger list items or related technology only upon the recipient's assurance that in the case of retransfer of the concerned items and of items derived from facilities originally transferred, or with the help of equipment or technology originally transferred by the supplier, the recipient of the retransfer or transfer will have to provide the same assurances as those required by the supplier for the original transfer.
- The third concerns an obligation to bring into force a safeguards agreement requiring the application of safeguards on all trigger list items if the CSA should be terminated.
- The fourth is related to the elaboration of an appropriate verification measure or a restitution of transferred and derived trigger list items if the IAEA decides that an application of IAEA safeguards is no longer possible.

Complementary to these conditions, suppliers should require from a recipient country to place a nuclear material and facilities under effective physical protection in order to prevent unauthorised use and handling. Levels of physical protection on which these measures should be based are the subject of an agreement between supplier and recipient.

The transfers of **enrichment and reprocessing facilities, equipment and technology** are submitted to stricter conditions than those applicable to trigger list items. A transfer should not be authorised unless the following criteria are met by the recipient State:

- Should be a **NPT Party** and be in full compliance with its obligations under the Treaty;
- Should **not be identified** by IAEA Secretariat report as being **in breach** with its obligations to comply with its **safeguards** agreement;
- Should have brought into force a Comprehensive Safeguards Agreement and an Additional Protocol (or similar regional agreement approved by the IAEA);
- Should adhere to the **NSG Guidelines** and report to the UN Security Council that it implements **effective export controls** as identified by Security Council Resolution 1540;
- Should conclude an **inter-governmental agreement** with the supplier including assurances regarding non-explosive use, effective safeguards in perpetuity, and retransfer;
- Should have provided a *“legally-binding undertaking from the recipient State that neither the transferred facility, nor any facility incorporating such equipment or based on such technology, will be modified or operated for the production of greater than 20% enriched uranium”*.

Moreover, supplier States should encourage recipients to accept, as an alternative to national enrichment and reprocessing facility, **any other appropriate multinational participation** in a resulting facility.

Finally, supplier States should avoid as practicable as it might be a transfer of enabling design and associated manufacturing technology and should negotiate an agreement that permits or enables replication of the facilities.

### **Condition of supply for NSG dual-use items**

Conditions of supply for dual-use items to be required by the supplier State consist essentially in the submission of three government-to-government assurances:

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- A statement from the end-user specifying the **uses** and the **end-use** locations of the proposed transfers;
- An assurance explicitly stating that the proposed transfer or any replica thereof would not be used in **any nuclear explosive active** or **unsafeguarded** nuclear fuel cycle activity;
- An assurance that a **prior consent** of the supplier will be required before transferring any dual-use item to a State not adhering to the Guidelines.

### **Biological and chemical dual-use items**

Regarding transfers of chemicals for purposes not prohibited, the **Chemical Weapons Convention (CWC)**<sup>99</sup> divides chemicals in three categories for which specific regimes are organised.

**Category I** contains chemicals considered as **very sensitive**. States Parties shall not produce, acquire, retain or use such chemicals outside the territories of States Parties and shall not transfer them outside their territory except to another State Party. Moreover, quantities of chemicals that States Parties could acquire per year through production, withdrawal from stocks of chemical weapons and transfer, are strictly limited to or less than 1 tonne. The production of such chemicals should be assumed by a single small-scale facility.

The transfers of equipment specifically designed for use in connection with these chemicals are not submitted to specific conditions. Nevertheless, due to the general commitment not to assist, encourage or induce, in any way, anyone to engage in any activity forbidden by the Convention, it could be assumed that States Parties should not export such equipment.

**Category II** includes chemicals considered as **sensitive**. States Parties should disclose on annual basis national data on the quantities produced, processed, consumed, imported and exported of each chemical listed, as well as a quantitative specification of import and export for each country involved. Similar to the first category, chemicals of category II should only be transferred to or received from States Parties. This obligation has taken effect in April 2001, i.e. three years after entry into force of the Convention.

**Category III** comprises chemicals considered as **less sensitive**. Similar to Category II, States Parties should disclose on annual basis national data on quantities produced, imported and exported, as well as a quantitative specification of import and export for each country involved. Transfers of Category III items to non-States Parties of the CWC are authorised if a supplier has adopted all necessary measures to ensure that the transferred chemicals would only be used for purposes not prohibited under the CWC. *Inter alia*, a supplier State shall require from a recipient State a certificate stating, in relation to the transferred chemicals:

- That they will only be used for purposes not prohibited under this Convention;
- That they will not be retransferred;
- Their types and quantities;
- Their end-use(s); and
- The name(s) and address(es) of the end-user(s).

The **Convention on the Prohibition of the Development, Production and stockpiling of Bacteriological (Biological) and Toxin Weapons and their Destruction (BTWC)** states explicitly in its Article III that States Parties should not transfer “*to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organisations to manufacture or otherwise acquire any of agents,*

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<sup>99</sup> The Convention has its own website: <https://www.opcw.org/chemical-weapons-convention>.

*toxins, weapons, equipment or” their means of delivery.*

The Guidelines of the **Australia Group** establish a list of non-exhaustive criteria to be taken into account in the licencing decision-making process. These **criteria** are:

- Information about proliferation and terrorism involving chemical and biological weapons (CBW), including any proliferation or terrorism-related activity, or about involvement in clandestine or illegal procurement activities of the parties to the transaction;
- Capabilities and objectives of the chemical and biological activities of the recipient State;
- Significance of the transfer in terms of the appropriateness of the stated end use, including any relevant assurances submitted by the recipient State or end-user and the potential development of CBW;
- Assessment of the end use of the transfer, including whether a transfer has been previously denied to the end-user, whether the end-user has diverted for unauthorised purposes any transfer previously authorised, and, to the extent possible, whether the end-user is capable of securely handling and storing the item transferred;
- Applicability of relevant multilateral agreements including the BTWC and the CWC.

The transfer should be denied if the Government considers that the items will be used in a chemical or biological weapons program or for CBW terrorism, or if there is a significant risk of diversion.

In addition to the assessment of these criteria, States should check that the items are not intended for a retransfer to a third State. In case of further re-export, items should be submitted to the guidelines in the recipient State and a prior consent of the initial exporter should be required. Government-to-government assurances confirming such obligation should be exchanged before authorising the transfer.

#### **Missile technology dual-use items**

The **Missile Technology Control Regime (MTCR)** has established a list of 20 items divided in two categories.

The transfers of **Category I** items are, like those from the NSG “sensitive export”, almost forbidden even if the text of the MTCR guidelines is not as restrictive. Participating States are encouraged to consider transfers of Category I items with particular restraint and with “*a strong presumption to deny such transfers*”. There is one absolute prohibition in the regime, which is the transfer of Category I production facilities.

In the rare case were such transfer might be undertaken, a binding government-to-government assurance on end use and retransfer prohibition should be required. Moreover, a responsibility of a supplier and not only of a recipient is engaged. The MTCR guidelines specified that suppliers should “*assume responsibility for taking all steps necessary to ensure that the item is put only to its stated end-use*”.

The transfers of **Category II** items should be submitted to export control authorisation when a supplier state “*judges on the basis of all available, persuasive information, evaluated according to factors, that they are intended to be used for the delivery of weapons of mass destruction, and there will be a strong presumption to deny such transfers*”. Factors to be considered by the national authorities of a supplier State while assessing a licence application are following: concerns about WMD proliferation, capabilities and objectives of missile and space programs of the recipient State, significance of the transfer in terms of a potential development of WMD delivery systems, assurances given by the recipient, applicability of relevant multilateral agreements and risk of controlled items falling into the hands of terrorist

groups and individuals.

### **Other items listed by the Wassenaar Arrangement**

Compared to other trade control regimes, the Wassenaar Arrangement is not dedicated to one category of WMD. Its list of dual-use goods and technologies is divided in nine categories that include items not necessarily covered by other regimes. Such categories are special material and related equipment, material processing, electronics, computers, telecommunications and information security, sensors and lasers, navigation and avionics, marine, aerospace and propulsion. It is usually admitted that the Wassenaar dual use list has inspired the structure of the EU dual use list (Annex I of this Regulation).

The Wassenaar Arrangement has adopted several guidelines, statements of understanding and elements of procedures to support application assessment by States' authorities:

- Statement of Understanding on Control of Non-Listed Dual-Use Items adopted December 2003;
- Elements for Effective Legislation on Arms Brokering adopted December 2003;
- Best Practices for Implementing Intangible Transfers of Technology Controls adopted December 2006;
- Best Practice Guidelines on Internal Compliance Programmes for Dual- Use Goods and Technologies adopted December 2011.

2. In addition to the criteria set in paragraph 1, when assessing an application for a global export authorisation Member States shall take into consideration the application by the exporter of proportionate and adequate means and procedures to ensure compliance with the provisions and objectives of this Regulation and with the terms and conditions of the authorisation.

### **Comment:**

The objective of this paragraph is to encourage Member States to require, from exporters, an implementation of an effective internal compliance programme (ICP) before granting a global authorisation. Such programme might include a status of "Authorised Economic Operator" as established by the Community Customs Code.<sup>100</sup>

On 5 August 2019, the Commission Recommendation (EU) 2019/1318 of 30 July 2019 on internal compliance programmes for dual-use trade controls under Council Regulation (EC) No 428/2009 has been published on the Official Journal of the European Union (OJ L 205/15 of 5/8/19).<sup>101</sup>

This Commission Recommendation on ICPs, which is not legally binding, provides a framework to help exporters identify, manage and mitigate risks associated with dual-use trade controls and to ensure compliance with the relevant EU and national laws and regulations.

The guidance focuses on the following 7 core elements for an effective ICP, each one detailed in a dedicated section:

- Top-level management commitment to compliance
- Organisation structure, responsibilities and resources
- Training and awareness raising

<sup>100</sup> Provisions on AEO within the UCC are set out in Section 4 of Chapter 2 of Title 1.

<sup>101</sup> Commission Recommendation (EU) 2019/1318 of 30 July 2019 on internal compliance programmes for dual-use trade controls under Council Regulation (EC) No 428/2009, OJ L 205/15 of 5/8/19, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019H1318&from=EN>.

## Article 12

Transaction screening process and procedures

Performance review, audits, reporting and corrective actions

Recordkeeping and documentation

Physical and information security

The Recommendation includes also a set of questions pertaining to a company's ICP (contained in Annex I to the Recommendation) and a list of diversion risk indicators and "red flag" signs about suspicious enquiries or orders (contained in Annex II to the Recommendation).

**Bulgaria** and **Hungary** require the implementation of an ICP for **individual** authorisations.

**Austria, Bulgaria, Croatia, Denmark Hungary, Romania** and **Slovenia** require it for **national general** authorisation (NGA).

**Austria, Bulgaria, Denmark, Finland** and **Hungary** require it for EU GEA.

**Croatia, Finland, Hungary** and **Germany** require an ICP for **global authorisation (GA)**.

Nevertheless, if some Member States do not require the implementation of an ICP, it does not mean that such element would be not be considered as key factor, when they will consider individual, global or general authorisation applications (**Belgium, Ireland, The Netherlands, Sweden**).

It should be noted that criteria, conditions and requirements are rather different from one Member State to another. Some, as for example **Poland**, introduced an ICP certification in the national legislation with a reference to ISO 9000. Others, like **Finland**, publish various Guidelines for exporters but it is up to exporters to apply them. The size of a company might also influence the level of requirements requested by Member States' authorities.

**Table 14: Internal Compliance Program**

Member State	Mandatory	Certification
Austria	NGA, EU GEA.	
Belgium (Flemish Region)	<p>No formal legal requirement.</p> <p>In conformity with article 12 of Regulation 428/2009, the existence of an ICP is taken into account in any global licence application. In practice this means that most global licences will be denied if no performing ICP is in place.</p> <p>Exporters are encouraged to have an ICP in place via website and outreach.</p>	<p>No formal certification. ICP is an ongoing commitment and subject to ongoing evaluation on the basis of meetings, presentation by the exporter of their ICP, but most importantly on day-to-day interaction and practical application.</p>

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Member State	Mandatory	Certification
Belgium (Walloon Region)	<p>As regards the ICP requirement, the Walloon Licensing Authority applies the provisions of Art 12.2 of the Dual-Use Regulation.</p> <p>Generally speaking, the implementation of an effective ICP constitutes a significant input for a license application.</p>	
Belgium (Brussels)	<p>Guidelines for academia are published on the official websites. Furthermore, ICP procedures for companies will be published in current 2020 (probably, first semester).</p>	
Bulgaria	Individual, NGA, EU GEA.	
Croatia	GEA, NGA.	
Cyprus	None.	
Czech Republic	COMMISSION RECOMMENDATION (EU) 2019/1318 of 30 July 2019 on internal compliance programmes for dual-use trade controls under Council Regulation (EC) No 428/2009.	
Denmark	EU GEA, NGA.	
Estonia	None.	
France	None.	
Finland	GEA.	
Germany	None.	
Greece	None.	

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Member State	Mandatory	Certification
Hungary	Individual, GEA, NGA, EU GEA.	
Ireland	An ICP is required to be submitted with a global licence application.	
Italy	None.	
Latvia	Must have a designated person and record keeping.	
Lithuania	None.	
Luxembourg	None.	
Netherlands	None.	
Poland	None.	Yes.
Romania	ICP required for global licences.	
Slovakia	None.	
Slovenia	NGA.	
Spain	None.	
Sweden	No, however the ISP recommends all companies involved with dual-use items to have Internal Compliance Programs in place.	

## Article 13

### Article 13

1. The competent authorities of Member States, acting in accordance with this Regulation, may refuse to grant an export authorisation and may annul, suspend, modify or revoke an export authorisation which they have already granted. Where they refuse, annul, suspend, substantially limit or revoke an export authorisation or when they have determined that the intended export is not to be authorised, they shall notify the competent authorities of the other Member States and the Commission thereof and share the relevant information with them. In case the competent authorities of a Member State have suspended an export authorisation, the final assessment shall be communicated to the Member States and the Commission at the end of the period of suspension.

#### **Comment:**

As mentioned in the comment related to Article 12, due to the introduction of criteria, the fulfilment of conditions required in an application form does not grant an applicant the right to obtain an authorisation. Moreover, when an authorisation has been granted and until the items leave the territory of the EU, Member States' licencing authorities can always revoke a licence they have granted.

2. The competent authorities of Member States shall review denials of authorisations notified under paragraph 1 within three years of their notification and revoke them, amend them or renew them. The competent authorities of the Member States will notify the results of the review to the competent authorities of the other Member States and the Commission as soon as possible. Denials which are not revoked shall remain valid.

3. The competent authorities of the Member States shall notify the Member States and the Commission of their decisions to prohibit a transit of dual-use items listed in Annex I taken under Article 6 without delay. These notifications will contain all relevant information including the classification of the item, its technical parameters, the country of destination and the end user.

4. Paragraphs 1 and 2 shall also apply to authorisations for brokering services.

5. Before the competent authorities of a Member State, acting under this Regulation, grant an authorisation for export or brokering services or decide on a transit they shall examine all valid denials or decisions to prohibit a transit of dual-use items listed in Annex I taken under this Regulation to ascertain whether an authorisation or a transit has been denied by the competent authorities of another Member State or States for an essentially identical transaction (meaning an item with essentially identical parameters or technical characteristics to the same end user or consignee.) They shall first consult the competent authorities of the Member State or States which issued such denial(s) or decisions to prohibit the transit as provided for in paragraphs 1 and 3. If following such consultation, the competent authorities of the Member State decide to grant an authorisation or allow the transit, they shall notify the competent authorities of the other Member States and the Commission, providing all relevant information to explain the decision.

## Article 13

### Comment:

The term “**authorisation or a transit has been denied**” covers denials issued for authorisations related to either items listed in Annex I or items not listed if a Member State has implemented Articles 4(7), 5(2) and (3) or 6(3) of this Regulation. Nevertheless, an obligation to consult other Member States concerns only listed items. As regards non-listed items, a consultation will be required only if a Member State has issued a similar catch-all clause and submitted to authorisation a similar transaction. This might lead to some difficulties with respect to certain transit transactions as far as Member States are not constrained to notify their decisions to prohibit a transit of non-listed items.

Due to the fact that the EU no-undercut mechanism is initiated **only** if an export authorisation has been previously denied, it is essential that exporters do not refrain themselves in applying for an authorisation even if they know that an authorisation will be denied.

6. All notifications required pursuant to this Article shall be made via secure electronic means including the system referred to in Article 19(4).

7. All information shared in accordance with the provisions of this Article shall be in compliance with the provisions of Article 19(3), (4) and (6) concerning the confidentiality of such information.

## Article 14

### Article 14

1. All individual and global export authorisations and authorisations for brokering services shall be issued in writing or by electronic means on forms containing at least all the elements and in the order set out in the models which appear in Annex IIIa and IIIb.

#### **Comment:**

The form proposed in Annex III shall be considered as a reference for EU Member States, which they can use to establish their national forms. The main objective of such reference is to ensure a mutual recognition of the licences used by national authorities.

#### **Comment: Authorisation fee for licence application and/or licence issuing**

The majority of Member States does not request to operators a fee to apply or to issue a licence.

Some Member States submit application and/or the issue of licence to a small fee: **Estonia, Czech Republic** (licence only), **Poland** and **Lithuania** (licence only).

**Bulgaria** imposes to its exporters dealing with dual use items and technology fees for:

- 1) Prior registration for export (term of validity five years – 125€) and for an individual export authorisation (30€);
- 2) Prior brokering services registrations (term of validity five years – 125€) and individual export authorisation for brokerage deal (30€).

**Hungary** requests a fix amount for brokering and transit licences of 10€.

**Latvia** applies a State fee for issuance of a licence for goods of total value below 1422,87 EUR of 7,11 EUR. For goods of total value above 1422,87 EUR the State fee is 2,5% of total value of goods, but not exceeding 711,44 EUR.

**Slovenia** applies an administrative fee for issuing a licence of 22,60 EUR.

**Sweden** does not apply any authorisation fee for licence application and/or licence issuing. However, all dual-use operators are subject to an annual fee to the ISP. The annual fee is calculated based on the total cost incurred by the ISP to operate dual-use licence and compliance procedure and divided proportionally between all dual-use operators established in Sweden.

**Denmark** does not have any fees regarding processing of dual-use cases, except for countries under sanctions. This fee covers only the administrative costs (for example, the licensing application regarding items listed on annex III in the Iran-regulation would require a fee of EUR 1.000).

2. At the request of exporters, global export authorisations that contain quantitative limitations shall be split.

## CHAPTER IV UPDATING OF LIST OF DUAL-USE ITEMS

### Article 15

1. The lists of dual-use items set out in Annex I shall be updated in **conformity with the relevant obligations and commitments**, and any modification thereof, that Member States have accepted as members of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties.

**Comment:**

Since the Treaty on the Functioning of the European Union entered into force, the process has changed and the proposal shall be adopted by the Council and the European Parliament, according to the ordinary legislative procedure (Article 207(2) TFEU).

In December 2011, facing the lengthy delay to adopt the annual update of Annex I, the Commission tabled a new proposal to amend the Regulation, empowering the Commission to adopt the annual update by delegated acts. In April 2014, the Parliament and the Council finally adopted such proposal. It constitutes paragraph 3 of the present article.

2. Annex IV, which is a subset of Annex I, shall be updated with regard to Article 30 of the Treaty establishing the European Community, namely the public policy and public security interest of the Member States.

**Comment:**

Chapter III of the EC Treaty (presently the TFEU) prohibits all quantitative restrictions between Member States. However, Annex IV of this Regulation establishes a list of items to be controlled between Member States. This intra-EU limitation of the free movement of goods might be considered as a quantitative restriction. Therefore it has to be ruled in conformity with the exception provisions established by Article 36 TFEU (former Article 30 TEC) which states that: *“the provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States”*.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 23a concerning updating the list of dual-use items set out in Annex I. The updating of Annex I shall be performed within the scope set out in paragraph 1 of this Article. Where the updating of Annex I concerns dual-use items which are also listed in Annexes IIa to IIg or IV, those Annexes shall be amended accordingly.

**Comment:**

This provision has been implemented for the first time in 2014.

## CHAPTER V CUSTOMS PROCEDURES

### *Article 16*

1. When completing the formalities for the export of dual-use items at the customs office responsible for handling the export declaration, the exporter shall furnish **proof** that any necessary export authorisation has been obtained.

2. A translation of any documents furnished as proof into an official language of the Member State where the export declaration is presented may be required of the exporter.

3. Without prejudice to any powers conferred on it under, and pursuant to, the Community Customs Code, a **Member State** may also, for a period not exceeding the periods referred to in paragraph 4, **suspend the process of export from its territory**, or, if necessary, otherwise prevent the dual-use items listed in Annex I which are covered by a valid export authorisation from leaving the Community via its territory, where it has grounds for suspicion that:

- (a) relevant information was not taken into account when the authorisation was granted, or
- (b) circumstances have materially changed since the grant of the authorisation.

4. In the case referred to in paragraph 3, the competent authorities of the Member State which granted the export authorisation shall be **consulted** forthwith in order that they may take action pursuant to Article 13(2). If such competent authorities decide to maintain the authorisation, they shall reply within 10 working days, which, at their request, may be extended to 30 working days in exceptional circumstances. In such case, or if no reply is received within 10 or 30 days, as the case may be, the dual-use items shall be released immediately. The Member State that granted the authorisation shall inform the other Member States and the Commission.

**Comment:**

This provision allows Member States to freeze for a short period of time an export of dual-use items authorised by another Member State. After a consultation, if the authorisation is maintained by the Member State who has granted it, the dual-use items shall be released and exported.

## Article 17

1. Member States may provide that **customs formalities** for the export of dual-use items may be completed **only at customs offices empowered to that end**.

Member States availing themselves of the option set out in paragraph 1 shall inform the Commission of the duly empowered customs offices. The Commission shall publish the information in the C series of the *Official Journal of the European Union*.

**Comment:**

This option has been implemented by **Bulgaria, Estonia, Latvia, Lithuania, Poland and Romania**. The list of customs authorities empowered was published by the Commission in the C series of the *Official Journal of the European Union* (C 304/3, 20/8/2016, p. 3).

**Comment:**

After the terrorist attacks in New York and Madrid, it appeared necessary to respond to a global concern about protecting the international supply chain from terrorism. Thus, a new mission has been assigned to customs in the field of trade security.

Moreover, the Community Customs Code was amended and an electronic information exchange system between Member States' customs administrations has been established. This system introduces an obligation for an exporter to notify to customs authorities' information on items prior to their import in or export from the EU, via an electronic pre-arrival and pre-departure declaration. This system concerns all categories of goods and therefore is applicable to export and import of dual-use items.<sup>102</sup> Nevertheless, exporters can be granted the status of "authorised economic operator" which provides facilitations regarding customs controls related to security and safety considerations.

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<sup>102</sup> Provisions on electronic systems in the UCC are laid out in Title IX.

## Article 18

The provisions of Articles 843 and 912b to 912g of Regulation (EEC) No. 2454/93<sup>103</sup> shall apply to the restrictions relating to the export, re-export and exit from the customs territory of dual-use items for the export of which an authorisation is required under this Regulation.

### **Comment:**

The following reference, included in Article 14 of Council Regulation (EC) No. 1334/2000<sup>104</sup>, has been modified by the Article 1 of Council Regulation (EC) No. 2432/2001<sup>105</sup> amending and updating Regulation (EC) No. 1334/2000 setting up a Community Regime for the control of exports of dual-use items and technology:

- Articles 463 to 470 and Article 843 of Regulation (EEC) No. 2454/93 are thereby replaced by Article 843 and Article 912 b to 912 g of Regulation (EEC) No. 2454/93.

These provisions concern the procedure to be applied to transfers of dual-use items leaving temporarily the territory of the EU.

Below the text of these articles<sup>106</sup>.

### **Article 843 of Regulation (EEC) No. 2454/93 worded as follow:**

*“ 1. This Title lays down the conditions applicable to goods moving from one point in the customs territory of the Community to another which temporarily leave that territory, whether or not crossing the territory of a third country, whose removal or export from the customs territory of the Community is prohibited or is subject to restrictions, duties or other charges on export by a Community measure in so far as that measure so provides and without prejudice to any special provisions which it may comprise.*

*These conditions shall not, however, apply:*

- *Where, on declaration of the goods for export from the customs territory of the Community, proof is furnished to the customs office at which export formalities are carried out that an administrative measure freeing the goods from restriction has been taken, that any duties, taxes or other charges due have been paid or that, in the circumstances obtaining, the goods may leave the customs territory of the Community without further formalities, or*
- *Where the goods are transported by direct flight without stopping outside the customs territory of the Community, or by a regular shipping service within the meaning of Article 313a. 2.*

*Where the goods are placed under a Community transit procedure, the principal shall enter*

<sup>103</sup> As amended by Regulation (EC) No. 2432/2001 of 20 November 2001 amending and updating Regulation (EC) No. 1334/2000 setting up a Community regime for the control of exports of dual use items and technology (OJ L 338, 20/12/2001, p. 1) entered into force the thirtieth day following that of its publication.

<sup>104</sup> As last amended by Council Regulation (EC) No. 880/2002 of 27 May 2002 amending Regulation (EC) No. 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology and Regulation (EC) No. 149/2003: Information on measures adopted by Member States in conformity with Articles 5, 6, 13 and 21.

<sup>105</sup> OJ L 338, 20/12/2001, p. 1.

<sup>106</sup> Commission Regulation (EEC) No. 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No. 1602/2000 of 24 July 2000 (OJ L 188, 26/7/2000, p. 1).

## Article 18

on the document used for the Community transit declaration, specifically in box 44 ('Additional information') of the Single Administrative Document where that is used, one of the following phrases:

- Salida de la Comunidad sometida a restricciones o imposiciones en virtud del (de la) Reglamento/Directiva/Decisión no...
- Udpassage fra Fællesskabet undergivet restriktioner eller afgifter i henhold til forordning/direktiv/afgørelse nr. ...
- Ausgang aus der Gemeinschaft — gemäß Verordnung/Richtlinie/ Beschluß Nr. ... Beschränkungen oder Abgaben unterworfen.
- Η έξοδος από την Κοινότητα υποβάλλεται σε περιορισμούς η σε επιβαρύνσεις από τον κανονισμό/την οδηγία/την απόφαση αριθ. ...
- Exit from the Community subject to restrictions or charges under Regulation/Directive/Decision No ...
- Sortie de la Communauté soumise à des restrictions ou à des impositions par le règlement ou la directive/décision no ...
- Uscita dalla Comunità soggetta a restrizioni o ad imposizioni a norma del(la) regolamento/direttiva/decisione n. ...
- Bij uitgang uit de Gemeenschap zijn de beperkingen of heffingen van Verordening/Richtlijn/Besluit nr. ... van toepassing.
- Saída da Comunidade sujeita a restrições ou a imposições pelo(a) Regulamento/Directiva/Decisão no ...
- Yhteisöstä vientiin sovelletaan asetuksen/direktiivinl./päätöksen N:o ... mukaisia rajoituksia tai maksuja
- Utförsel från gemenskapen omfattas i enlighet med förordning/ direktiv/beslut ... av restriktioner eller pålagor

3. Where the goods are: (a) placed under a customs procedure other than the Community transit procedure, or (b) moved without being under a customs procedure. The T5 control copy shall be made out in accordance with Articles 912a to 912g. In box 104 of the T5 form a cross shall be entered in the square 'Other (specify)' and the phrase stipulated in paragraph 2 added. In the case of goods falling within point (a) of the first subparagraph, the T5 control copy shall be made out at the customs office at which the formalities required for consignment of the goods are completed. In the case of goods falling within point (b) of the first subparagraph, the T5 control copy shall be presented with the goods at the competent customs office for the place where the goods leave the customs territory of the Community. Those offices shall specify the latest date by which the goods, must be presented at the customs office of destination and, where appropriate, shall enter in the customs document under cover of which the goods are to be transported the phrase specified in paragraph 2. For the purposes of the T5 control copy, the office of destination shall be either the office of destination for the customs procedure under point (a) of the first subparagraph or, where point (b) of the first subparagraph applies, the competent customs office for the place where the goods are brought back into the customs territory of the Community.

4. Paragraph 3 shall also apply to goods moving from one point in the customs territory of the Community to another through the territory of one or more of the EFTA countries referred to in Article 309(f) which are reconsigned from one of those countries.

5. If the Community measure referred to in paragraph 1 provides for the lodging of a guarantee, that guarantee shall be lodged in accordance with Article 912b(2).

6. Where the goods, on arrival at the office of destination, either are not immediately recognised as having Community status or do not immediately undergo the customs formalities required for goods brought into the customs territory of the Community, the office of destination shall take all the measures prescribed for them.

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7. In the circumstances described in paragraph 3, the office of destination shall return the original of the T5 control copy without delay to the address shown in box B 'Return to ...' of the T5 form once all the required formalities have been completed and annotations made.

8. Where the goods are not brought back into the customs territory of the Community, they shall be deemed to have left the customs territory of the Community irregularly from the Member State where either they were placed under the procedure referred to in paragraph 2 or the T5 control copy was made out.

### **Article 912a**

1. For purposes of this part:

(a) 'competent authorities' means: the customs authorities or any other Member State authority responsible for applying this part;

(b) 'office' means: the customs office or body responsible at local level for applying this part;

(c) 'T5 control copy' means: a T5 original and copy made out on forms corresponding to the specimen in Annex 63 accompanied where appropriate by either one or more original and copy forms T5 bis corresponding to the specimen in Annex 64 or one or more original and copy loading list T5 corresponding to the specimen in Annex 65. The forms shall be printed and completed in accordance with the explanatory note in Annex 66 and, where appropriate, any additional instructions laid down in other Community rules.

2. Where application of Community rules concerning goods imported into, exported from, or moving within the customs territory of the Community is subject to proof of compliance with the conditions provided for or prescribed by that measure for the use and/or destination of the goods, such proof shall be furnished by production of a T5 control copy, completed and used in accordance with the provisions of this part.

3. All goods entered on a given T5 control copy shall be loaded on a single means of transport within the meaning of the second subparagraph of Article 349(1), intended for a single consignee and the same use and/or destination. The competent authorities may allow the form corresponding to the specimen in Annex 65 to be replaced by T5 loading lists made out by an integrated electronic or automatic data-processing system or by descriptive lists drawn up for the purposes of carrying out dispatch/export formalities which include all the particulars provided for in the Annex 65 specimen form, provided such lists are designed and completed in such a way that they can be used without difficulty by the authorities in question and offer all the safeguards considered appropriate by those authorities.

4. In addition to obligations imposed under specific rules, any person who signs a T5 control copy shall be required to put the goods described in that document to the declared use and/or dispatch the goods to the declared destination. That person shall be liable in the event of the misuse by any person of any T5 control copy that the former has drawn up.

5. By way of derogation from paragraph 2 and unless otherwise provided in the Community rules requiring a control on the use and/or destination of the goods, each Member State shall have the right to require that the proof of goods having been assigned to the use and/or destination provided for or prescribed shall be furnished in accordance with a national procedure, provided that the goods do not leave its territory before they have been assigned to that use and/or destination.

### **Article 912b**

1. A T5 control copy shall be made out in one original and at least one copy. Each of their forms must bear the original signature of the person concerned and include all the particulars regarding the description of goods and any additional information required by the provisions relating to the Community rules imposing the control.

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2. Where the Community rules imposing the control provide for the lodging of a guarantee, it shall be lodged:

- at the agency designated by those rules or, failing that, at either the office which issues the T5 control copy or another office designated for that purpose by the Member State to which that office belongs, and
- in that manner laid down in those rules or, failing that, by the authorities of that Member State.

In that case, one of the following phrases shall be entered in box 106 of the T5 form:

- *Garantía constituida por un importe de ... euros*
- *Sikkerhed på ... EUR*
- *Sicherheit in Höhe von ... EURO geleistet*
- *Κατατεθείσα εγγύηση ποσού ... ΕΥΡΩ*
- *Guarantee of EUR ... lodged*
- *Garantie d'un montant de ... euros déposée*
- *Garanzia dell'importo di ... EURO depositata*
- *- Zekerheid voor ... euro*
- *- Entregue garantia num montante de ... EURO*
- *Annettu ... euron suuruinen vakuus*
- *Säkerhet ställd till et belopp av ... euro.*

3. Where the Community rules imposing the control specify a time limit for assigning the goods to a particular use and/or destination, the statement 'Time limit of ... days for completion' in box 104 of the T5 form shall be completed.

4. Where the goods are moving under a customs procedure, the T5 control copy shall be issued by the customs office where the goods are dispatched. The document for the produce shall bear a reference to the T5 control copy issued. Similarly, box 109 of the T5 form issued shall contain a reference to the document used for the procedure.

5. Where the goods are not placed under a customs procedure, the T5 control copy shall be issued by the office where the goods are dispatched. One of the following phrases shall be entered in box 109 of the T5 form:

- *Mercancíasno incluídasen un régimen aduanero*
- *Ingen forsendelsesprocedure*
- *Nicht in einem Zollverfahren befindliche Waren*
- *Εμπορεύματα εκτός τελωνειακού καθεστώτος*
- *Goods not covered by a customs procedure*
- *Marchandises hors régime douanier*
- *Merci non vincolate ad un regime doganale*
- *Geen douaneregeling*
- *Mercadoriasnão sujeitasa regime aduaneiro*
- *Tullimennettelyn ulkopuoletta olevat tavarat*
- *Varorna omfattasinte av något tullförfarande.*

6. The T5 control copy shall be endorsed by the office referred to in paragraphs 4 and 5. Such endorsement shall comprise the following, to appear in box A (office of departure) of those documents: (a) in the case of the T5 form, the name and stamp of the office, the signature of the competent person, the date of authentication and a registration number which may be pre-printed; (b) in the case of the T5bis form or T5 loading list, the registration number appearing on the T5 form. That number shall be inserted either by means of a stamp incorporating the name of the office or by hand; in the latter case it shall be accompanied by the official stamp of the said office.

7. Unless otherwise provided in the Community rules requiring a control on the use and/or destination of the goods, Article 357 shall apply *mutatis mutandis*. The office referred to in

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paragraphs 4 and 5 shall verify the consignment and shall complete and endorse box D, 'Control by office of departure', on the front of the T5 form.

8. The office referred to in paragraphs 4 and 5 shall keep a copy of each T5 control copy. The originals of these documents shall be returned to the person concerned as soon as all administrative formalities have been carried out, and boxes A (Office of departure), and B (Return to...) of the T5 form, duly completed.

9. Article 360 shall apply *mutatis mutandis*.

### Article 912c

1. The goods and the originals of the T5 control copies shall be presented at the office of destination. Unless otherwise provided in the Community rules requiring a control on the use and/or destination of the goods, the office of destination may allow the goods to be delivered direct to the consignee on such conditions as it shall lay down to enable it to carry out its control on or after arrival of the goods. Any person who presents a T5 control copy and the consignment to which it relates to the office of destination may, on request, obtain a receipt made out on a form corresponding to the specimen in Annex 47. The receipt may not replace the T5 control copy.

2. Where the Community rules require a control on the exit of goods from the customs territory of the Community:

- for goods leaving by sea, the office of destination shall be the office responsible for the port where the goods are loaded on the vessel operating a service other than a regular shipping service within the meaning of Article 313a,
- for goods leaving by air, the office of destination shall be the office responsible for the international Community airport, within the meaning of Article 190(b), at which the goods are loaded on an aircraft bound for an airport outside the Community,
- for goods leaving by any other modes of transport, the office of destination shall be the office of exit referred to in Article 793(2).

3. The office of destination shall carry out controls on the use and/or destination provided for or prescribed. It shall register the particulars of the T5 control copy by keeping a copy of the said document where appropriate, and the result of the controls which have been carried out.

4. The office of destination shall return the original of the T5 control copy to the address shown in box B ('Return to ...') of the T5 form once all the required formalities have been completed and annotations made.

### Article 912d

1. Where the issue of the T5 control copy calls for a guarantee under Article 912b(2), the provisions of paragraphs 2 and 3 shall apply:

2. Where quantities of goods have not been assigned to the prescribed use and/or destination, by the expiry of a specified time limit under Article 912b(3) where applicable, the competent authorities shall take the necessary steps to enable the office referred to in Article 912b(2) to recover, where applicable from the guarantee lodged, the proportion corresponding to those quantities. However, at the request of the person concerned, those authorities may decide to collect, where applicable from the guarantee, an amount obtained by taking the proportion of the guarantee corresponding to the amount of goods not assigned to the specified use and/or destination by the end of the prescribed time limit, and multiplying that by the quotient obtained from dividing the number of days over the time limit required for those quantities to be assigned their use and/or destination by the length, in days, of the time limit. This paragraph shall not apply where the person concerned can show that the goods in question have been lost through *force majeure*.

3. If, within six months either of the date on which the T5 control copy was issued or of expiry

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of the time limit entered in box 104 of the T5 form under 'Time limit of ..., days for completion', as the case may be, that copy, duly endorsed by the office of destination, has not been received by the return office specified in box B of the document, the competent authorities shall take the necessary steps to require the office referred to in Article 912b(2) to recover the guarantee provided for in that Article.

This paragraph shall not apply where the delay in returning the T5 control copy was not attributable to the person concerned.

4. The provisions of paragraphs 2 and 3 shall apply unless otherwise provided in the Community rules requiring a control on the use and/or destination of the goods and, in any event, without prejudice to the provisions concerning the customs debt.

### Article 912e

1. Unless otherwise provided in the Community rules requiring a control on the use and/or destination of the goods, the T5 control copy and the consignment, which it accompanies, may be divided before completion of the procedure for which the form was issued. Consignments resulting from such division may themselves be further divided. 2. The office at which the division takes place shall issue, in accordance with Article 912b, an extract of the T5 control copy for each part of the divided consignment. Each extract shall contain, *inter alia*, the additional information shown in boxes 100, 104, 105, 106 and 107 of the initial T5 control copy, and shall state the net mass and net quantity of the goods to which that extract applies. One of the following phrases shall be entered in box 106 of the T5 form used for each extract:

- *Extracto del ejemplar de control T5 inicial (número de registro, fecha, oficina y país de expedición): ...*
- *Udskrift af det oprindelige kontrolseksemplar T5 (registreringsnummer, dato, sted og udstedelsesland): ...*
- *-n Auszug aus dem ursprünglichen Kontrollexemplar T5 (Registriernummer, Datum, ausstellende Stelle und Ausstellungsland): ...*
- *Απόσπασμα του αρχικού αντιτύπου ελέγχου T5 (αριθμός πρωτοκόλλου, ημερομηνία, τελωνείο και χώρα έκδοσης): ...*
- *Extract of the initial T5 control copy (registration number, date, office and country of issue): ...*
- *Extrait de l'exemplaire de contrôle T5 initial (numéro d'enregistrement, date, bureau et pays de délivrance): ...*
- *Estratto dell'esemplare di controllo T5 originale (numero di registrazione, data, ufficio e paese di emissione): ...*
- *Uittreksel van het oorspronkelijke controle-exemplaar T5 (registratienummer, datum, kantoor en land van afgifte): ...*
- *- Extracto do exemplar de controlo T5 inicial (número de registo, data, estância e país de emissão): ...*
- *Ote alun perin annetusta T5-valvontakappaleesta (kirjaamisnumero, antamispäivämäärä, -toimipaikka ja -maa): ...*
- *Utdrag ur ursprungligt kontrollexemplar T5 (registreringsnummer, datum, utfärdande kontor och land): ...*

Box B 'Return to ...' of the T5 form shall contain the information shown in the corresponding box of the initial T5 form. One of the following phrases shall be entered in box J 'Controls on the use and/or destination' of the initial T5 form:

- *... (número) extractos expedidos — copias adjuntas*
- *... (antal) udstedte udskrifter — kopier vedføjjet*
- *... (Anzahl) Auszüge ausgestellt — Durchschriften liegen bei*

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- ... (αριθμός) εκδοθέντα αποσπάσματα — συνημμένα αντί- γραφα
- ... (number) extracts issued — copies attached
- ... (nombre) extraits délivrés— copies ci-jointes
- ... (numero) estratti rilasciati — copie allegare
- ... (aantal) uittreksels afgegeven — kopieën bijgevoegd
- ... (número) de extractosemitidos— cópiasjuntas
- Annettu ... (lukumäärä) otetta — jäljennökset liitteenä
- ... (antal) utdrag utfärdade — kopier bifogas.

The initial T5 control copy shall be returned without delay to the address shown in box B 'Return to ...' of the T5 form, accompanied by copies of the extracts issued. The office where the division takes place shall keep a copy of the initial T5 control copy and extracts. The originals of the extract T5 control copies shall accompany each part of the divided consignment to the corresponding offices of destination where the provisions referred to in Article 912c shall be applied.

3. In the case of further division pursuant to paragraph 1, paragraph 2 shall be applied *mutatis mutandis*.

### Article 912f

1. The T5 control copy may be issued retrospectively on condition that:

- the person concerned is not responsible for the failure to apply for or to issue that document when the goods were dispatched or he can furnish proof that the failure is not due to any deception or obvious negligence on his part,
- the person concerned furnishes proof that the T5 control copy relates to goods in respect of which all the formalities have been completed,
- the person concerned produces the documents required for the issue of the said T5 control copy,
- it is established to the satisfaction of the competent authorities that the retrospective issue of the T5 control copy cannot give rise to the securing of financial benefits which would not be warranted in the light of the procedure used, the customs status of the goods and their use and/or destination.

Where the T5 control copy is issued retrospectively, the T5 form shall contain in red one of the following phrases:

- Expedido a posteriori
- Udstedt efterfølgende
- nachträglich ausgestellt
- Εκδοθέν εκ των υστέρων
- Issued retrospectively
- Délivré a posteriori
- Rilasciato a posteriori
- achteraf afgegeven
- Emitido a posteriori
- Annettu jälkikäteen
- Utfärdat i efterhand

and the person concerned shall enter on it the identity of the means of transport by which the goods were dispatched, the date of departure and, if appropriate, the date on which the goods were produced at the office of destination.

2. Duplicates of T5 control copies and extract T5 control copies may be issued by the issuing office at the request of the person concerned in the event of the loss of the originals. The duplicate shall bear the stamp of the office and the signature of the competent official and in red block letters, one of the following words:

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- *DUPLICADO*
- *DUPLIKAT*
- *DUPLIKAT*
- *ΑΝΤΙΓΡΑΦΟ*
- *DUPLICATE*
- *DUPLICATA*
- *DUPLICATO*
- *DUPLICAAT*
- *SEGUNDA VIA*
- *KAKSOISKAPPALE*
- *DUPLIKAT.*

3. *T5 control copies issued retrospectively and duplicates may be annotated by the office of destination only where that office establishes that the goods covered by the document in question have been assigned to the use and/or destination provided for or prescribed by the Community rules.*

### **Article 912g**

1. *The competent authorities of each Member State may, within the scope of their competence, authorise any person who fulfils the conditions laid down in paragraph 4 and who intends to consign goods in respect of which a T5 control copy must be made out (hereinafter referred as 'the authorised consignor') not to present at the office of departure either the goods concerned or the T5 control copy covering them.*

2. *With regard to the T5 control copy used by authorised consignors, the competent authorities may:*

(a) *prescribe the use of forms bearing a distinctive mark as a means of identifying the authorised consignors;*

(b) *stipulate that box A of the form, 'Office of departure':*

- *be stamped in advance with the stamp of the office of departure and signed by an official of that office; or*
- *be stamped by the authorised consignor with a special approved metal stamp conforming to the specimen in Annex 62, or*
- *be pre-printed with the imprint of the special stamp conforming to the specimen in Annex 62 if printed by a printer approved for that purpose.*

*This imprint may also be entered by an integrated electronic or automatic data-processing system; (c) authorise the authorised consignor not to sign forms stamped with the special approved stamp referred to in Annex 62 which are made out by an integrated electronic or automatic data-processing system. In this event, the space reserved for the signature of the declarant in box 110 of the forms shall contain one of the following phrases:*

- *Dispensa de la firma, artículo 912 octavo del Reglamento (CEE) no 2454/93*
- *Underskriftsdispensation, artikel 912g i forordning (EØF) nr. 2454/93*
- *Freistellung von der Unterschriftsleistung, Artikel 912g der Verordnung (EWG) Nr. 2454/93*
- *Απαλλαγή από την υποχρέωση υπογραφής, άρθρο 912 ζ του κανονισμού (ΕΟΚ) αριθ. 2454/93*
- *Signature waived — Article 912g of Regulation (EEC) No 2454/93*
- *Dispense de signature, article 912 octies du règlement (CEE) no 2454/93 1993R2454*
- *Dispensa dalla firma, articolo 912 octies del regolamento (CEE) n. 2454/93*
- *Vrijstelling van ondertekening — artikel 912 octies van Verordening (EEG) nr. 2454/93*

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- *Dispensada a assinatura, artigo 912o — G do Regulamento (CE) n. 2454/93*
- *Vapautettu allekirjoituksesta — asetuksen (ETY) N:o 2454/93 912g artikla*
- *Befriad från underskrift, artikel 912g i förordning (EEG) nr 2454/93.*

3. *The authorised consignor shall complete the T5 control copy, entering the required particulars, including:*

*- in box A ('Office of departure') the date on which the goods were consigned and the number allocated to the declaration, and*

*- in box D ('Control by office of departure') of the T5 form one of the endorsements:*

- *Procedimiento simplificado, artículo 912 octavo del Reglamento (CEE) no 2454/93*
- *Forenklet fremgangsmåde, artikel 912g i forordning (EØF) nr. 2454/93*
- *Vereinfachtes Verfahren, Artikel 912g der Verordnung (EWG) Nr. 2454/93*
- *Απλουστευμένη διαδικασία, άρθρο 912 ζ) του κανονισμού (ΕΟΚ) αριθ. 2454/93*
- *Simplified procedure — Article 912g of Regulation (EEC) No 2454/93*
- *Procédure simplifiée, article 912 octies du règlement (CEE) no 2454/93*
- *Procedura semplificata, articolo 912 octies del regolamento (CEE) n. 2454/93*
- *Vereenvoudigde procedure, artikel 912 octies van Verordening (EEG) nr. 2454/93*
- *Procedimento simplificado, artigo 912o — G do Regulamento (CE) no 2454/93*
- *Yksinkertaistettu menettely — asetuksen (ETY) N:o 2454/93 912g artikla*
- *Förenklat förfarande, artikel 912g i förordning (EEG) nr 2454/93 and,*

*where appropriate, particulars of the period within which the goods must be presented at the office of destination, the identification measures applied and references to the dispatch document. That copy, duly completed and, where appropriate, signed by the approved consignor, shall be deemed to have been issued by the office indicated by the stamp referred to in paragraph 2(b). After dispatch of the goods, the authorised consignor shall without delay send the office of departure a copy of the T5 control copy, together with any document on the basis of which the T5 control copy was drawn up.*

4. *The authorisation referred to in paragraph 1 shall be granted only to persons who frequently consign goods, whose records enable the competent authorities to check on their operations and who have not committed serious or repeated offences against the legislation in force. The authorisation shall specify in particular:*

- *the office or offices competent to act as offices of departure for consignments,*
- *the period within which, and the procedure by which, the authorised consignor is to inform the office of departure of the consignment to be sent, in order that the office may carry out any controls, including any required by Community rules, before the departure of the goods,*
- *the period within which the goods must be presented at the office of destination; this period shall be determined according to the conditions of transport or by Community rules,*
- *the measures to be taken to identify the goods, which may include the use of special seals approved by the competent authorities and affixed by the authorised consignor,*
- *the means for providing guarantees where the issue of the T5 control copy is conditional thereon.*

5. *The authorised consignor shall take all necessary measures to ensure the safekeeping of the special stamp or of the forms bearing the imprint of the stamp of the office of departure or the imprint of the special stamp. The authorised consignor shall bear all the consequences, in particular the financial consequences, of any errors, omissions or other faults in the T5 control copies that he draws up or in the performance of the procedures incumbent on him under the authorisation provided for in paragraph 1. In the event of the misuse by any person of T5 control copy forms stamped in advance with the stamp of the office of departure or with the special stamp, the authorised consignor shall be liable, without prejudice to any*

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*criminal proceedings, for the payment of duties and other charges which have not been paid and for the repayment of any financial benefits which have been wrongly obtained following such misuse, unless he can satisfy the competent authorities by whom he was authorised that he took all the measures required to ensure the safekeeping of the special stamp or of the forms bearing the imprint of the stamp of the office of departure or the imprint of the special stamp.”*

## **CHAPTER VI ADMINISTRATIVE COOPERATION**

### *Article 19*

1. Member States, in cooperation with the Commission, shall take all appropriate measures to establish direct cooperation and exchange of information between competent authorities, in particular to eliminate the risk that possible disparities in the application of export controls to dual-use items may lead to a deflection of trade, which could create difficulties for one or more Member States.

2. Member States shall take all appropriate measures to establish direct cooperation and exchange of information between competent authorities with a view to enhance the efficiency of the Community export control regime. Such information may include:

- (a) Details of exporters deprived, by national sanctions, of the right to use the national general export authorisations or **Union** General Export Authorisations;
- (b) Data on sensitive end users, actors involved in suspicious procurement activities, and, where available, routes taken.

**Table 15: information exchanges between authorities**

Member State	Categories of information exchanges between authorities
Austria	<ul style="list-style-type: none"> <li>- Exporters;</li> <li>- Items;</li> <li>- Destinations;</li> <li>- End users;</li> <li>- End uses.</li> </ul>
Belgium (Flemish Region)	<ul style="list-style-type: none"> <li>- All information that must be legally shared;</li> <li>- All information that is relevant to fulfil other legal obligations;</li> <li>- All relevant information when deemed necessary or useful of ensuring export control.</li> </ul> <p>This generally does not contain information regarding the exporter or the products concerned (unless relevant to fulfil legal obligations – e.g. article 11 consultations). All company confidential information is treated confidentially.</p>
Belgium (Brussels)	<ul style="list-style-type: none"> <li>- Denials;</li> <li>- Other information if requested (technical, administrative and legal issues).</li> </ul>
Cyprus	Cyprus submits the data required for the preparation of the EU annual report and information regarding the denials is registered in DUES.
Czech Republic	Where necessary, relevant information is shared either bilaterally with competent national administrations of Member States or during regular meetings of the Coordination group and Dual Use Working Party. Information on denied exports shall be shared through DUES.
Greece	<ul style="list-style-type: none"> <li>-Lists of exporters who received an authorisation;</li> <li>-Lists of exporters who were denied an export authorisation;</li> <li>-Intelligence on specific cases (exporters, destinations, items).</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>- Registered exporters (published on their web site);</li> <li>- Issued licenses (sent via secure electronic channel to customs);</li> <li>- Annual reports (published on their web site);</li> <li>- Sharing of denials via DUES online system.</li> </ul>
Ireland	<p>Ireland regularly provides export licence application details to other competent authorities in the course of Article 11(1) consultations.</p> <p>Ireland also exchanges information with other competent authorities as a participating member of the Dual Use Working Party and Dual Use Co-ordination</p>

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	Group.
Italy	Generally, exchange information on national licensing legislation, procedures, denials and on some export applications. We also give some information on annual data about dual use items national exports. On other subjects, information is exchanged on request.
Latvia	Information about denials and information about cases on informal level.
Lithuania	License applications and accompanying documents for conclusions.
Luxemburg	The Grand-Duchy of Luxembourg does exchange all required information with competent EU authorities.
Netherlands	All relevant information is shared either bilaterally with specific agencies or through the regular interagency meetings.
Poland	The full information about the transaction is forwarded to the other competent consulting authorities.
Romania	Consultations on article 11 and information about licences granted through Commission channel.
Slovenia	<ul style="list-style-type: none"> <li>- Direct cooperation among competent authorities in Slovenia established with governmental Commission for dual-use export controls involving several Ministries, agencies and customs and</li> <li>- Direct cooperation with the counterparts in other MS on all topics related with dual-use controls as well as information detailed in Art 19(2) of the Reg. 248/2009/EC.</li> </ul>
Spain	<ul style="list-style-type: none"> <li>- Information about the operators;</li> <li>- Information about the goods;</li> <li>- Declared end-use and other possible end-uses;</li> <li>- Other relevant information.</li> </ul>
Sweden	The information required according to EU Reg. 428/2009 (as amended).

3. Council Regulation (EC) No. 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters<sup>107</sup>, and in particular the provisions on the confidentiality of information, shall apply mutatis mutandis, without prejudice to Article 22 of this Regulation.

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<sup>107</sup> OJ L 82, 22/3/1997, p. 1.

## Article 19

### Comment:

The Council Regulation (EC) No. 515/97 of 13 March 1997 (OJ L 82, 22/3/1997, p.1) has been amended several times, notably by Council Regulation (EC) No. 807/2003 (OJ L 122, 16/5/2003, p. 36) and by Regulation (EC) No. 766/2008 of the European Parliament and of the Council of 9 July 2008 (L 218, 13/8/2008, p. 48).

It has been lastly amended by Regulation (EU) 2015/1525 of the European Parliament and of the Council of 9 September 2015 amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 243, 18/9/2015).<sup>108</sup>

4. A secure and encrypted system for the exchange of information between Member States and, whenever appropriate, the Commission shall be set up by the Commission, in consultation with the Dual-Use Coordination Group set up pursuant to Article 23. The European Parliament shall be informed about the system's budget, development, provisional and final set-up and functioning, and network costs.

5. The provision of guidance to exporters and brokers will be the responsibility of the Member States where they are resident or established. The Commission and the Council may also make available guidance and/or recommendations for best practices for the subjects referred to in this Regulation.

6. The processing of personal data shall be in accordance with the rules laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the movement of such data<sup>109</sup> and Regulation (EC) No. 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>110</sup>.

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<sup>108</sup> A consolidated version of Regulation 515/97 is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01997R0515-20160901>.

<sup>109</sup> OJ L 281, 23/11/1995, p. 31.

<sup>110</sup> OJ L 8, 12/1/2001, p. 1.

## CHAPTER VII CONTROL MEASURES

### Article 20

1. Exporters of dual-use items shall keep detailed **registers** or records of their **exports**, in accordance with the national law or practice in force in the respective Member States. Such registers or records shall include in particular commercial documents such as invoices, manifests and transport and other dispatch documents containing sufficient information to allow the following to be identified:

- (a) The description of the dual-use items;
- (b) The quantity of the dual-use items;
- (c) The name and address of the exporter and of the consignee;
- (d) Where known, the end-use and end-user of the dual-use items.

2. In accordance with national law or practice in force in the respective Member States, brokers shall keep registers or records for brokering services which fall under the scope of Article 5 so as to be able to prove, on request, the description of the dual-use items that were the subject of brokering services, the period during which the items were the subject of such services and their destination, and the countries concerned by those brokering services.

3. The registers or records and the documents referred to in paragraph 1 shall be kept for at least three years from the end of the calendar year in which the export took place or the brokering service was provided. They shall be produced, on request, to the competent authorities of the Member State in which the exporter is established or the broker is established or resident.

**Comments:** Several Members States have laid down a longer period than the three years required by Article 20(3). In addition, the relevant registers or records and related documents should be kept for:

- Three years in **Finland, Greece, Ireland, Latvia, Romania.**
- Four years in **Spain.**
- Five years in **Croatia, Czech Republic, Denmark, Hungary, Poland, Slovenia, Spain and Sweden;**
- Seven years in **Austria, Belgium (Flemish Region), Cyprus and in the Netherlands;**
- Ten years in **Belgium (Walloon Region), Bulgaria, Estonia, Luxembourg and Slovakia.**

## *Article 21*

### ***Article 21***

In order to ensure that this Regulation is properly applied, each Member State shall take whatever measures are needed to permit its competent authorities:

- (a) To gather information on any order or transaction involving dual-use items;
- (b) To establish that the export control measures are being properly applied, which may include in particular the power to enter the premises of persons with an interest in an export.

## CHAPTER VIII OTHER PROVISIONS

### Article 22

1. An authorisation shall be required for intra-Community transfers of dual-use items listed in Annex IV.

**Comment:**

The Regulation uses the term “**transfer**”, when it refers to intra-EU controls of dual-use items and the term “**export**” with regard to transactions consisting in Community goods exports outside the EU.

A transfer cannot be compared to an export given that the principle is that the item, listed in Annex I, will circulate freely within the single market. Nevertheless, for security reasons, Member States have agreed to derogate to this principle for a limited number of items listed in Annex IV (which is a subset of Annex I). For this list of items, an authorisation will be required even with respect to transfers undertaken within the internal market. The authorities responsible for granting an authorisation would be defined by the geographical location of the item and not by the “exporter definition” (given that the transaction is not an export).

Due to the fact that the term “**transfer**” under Article 22 cannot be considered as an “**export**”, an authorisation shall be required, in principle, only for tangible transfers. The intangible transfers, however, do not need a special authorisation considering that this Regulation only specifies controls for intangible exports under the definition of “export”. Such understanding is not shared by all Member States and some require an authorisation even for intangible transfers.

Dual-use items listed in Annex IV are considered as more sensitive in terms of potential contribution to the elaboration of weapons of mass destruction. Annex IV contains:

- Items related to stealth technology;
- Items related to the Community strategic control: high explosives, detonators and multipoint initiation systems, cryptography, towed acoustic hydrophone, etc.;
- Items related to the MTCR technology.

Several Member States have issued a general licence for transfers of dual-use items listed in Part 1 of Annex IV.

Items listed in Part 2 of Annex IV shall not be covered by a general authorisation.

**Comment:**

If a national general transfer authorisation cannot be issued by Member States for the transfers of dual-use items listed in Part 2 of Annex IV, the concerned industries may apply for a global transfer authorisation. Nevertheless, some Member States rather prefer to apply a case-by-case policy and submit such transfers to individual authorisation only.

Items concerned by Part 2 of Annex IV are:

- Ricin and saxitoxin (Chemical Weapons Convention);

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- Most of the items listed by the Nuclear Suppliers Group trigger list (certain materials, equipment and technologies).

2. A Member State may impose an authorisation requirement for the transfer of **other** dual-use items from its territory to another Member State in cases where at the time of transfer:

- The operator knows that the final destination of the items concerned is **outside** the Community,
- Export of those items to that final destination is subject to an authorisation requirement pursuant to Article 3, 4 or 8 in the Member State from which the items are to be transferred, and such export directly from its territory is not authorised by a general authorisation or a global authorisation,
- No processing or working as defined in Article 24 of the Community Customs Code<sup>111</sup> is to be performed on the items in the Member State to which they are to be transferred.

### Comment:

Few Member States used the possibility to impose a national authorisation for transfers of items not listed in Annex IV (see table below). It should be kept in mind that such authorisation applies only if the three cumulative conditions, listed in Article 22(2)-(5), are met. Nevertheless, it seems that some Member States require an authorisation for transactions when the final destination is outside the European Union, even if the three conditions are not met.

3. The transfer authorisation must be applied for in the Member State from which the dual-use items are to be transferred.

4. In cases where the subsequent export of the dual-use items has already been accepted, in the consultation procedures set out in Article 11, by the Member State from which the items are to be transferred, the transfer authorisation shall be issued to the operator immediately, unless the circumstances have substantially changed.

5. A Member State which adopts legislation imposing such a requirement shall inform the Commission and the other Member States of the measures it has taken. The Commission shall publish this information in the C series of the *Official Journal of the European Union*.

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<sup>111</sup> This provision is replaced by article 60.2 of the UCC.

*Article 22*

**Table 16: Member States' authorisation requirements for intra-community transfers of items not listed in Annex IV**

Member State	National authorisation for transfer of items not listed in Annex IV
Belgium (Flemish Region)	Article 22(2) of Regulation 428/2009. Any other requirement would be a violation of the internal market and the free movement of items within the Union.
Bulgaria	Bulgaria has extended intra-EU transfer controls as set out in Article 22(2) of the Regulation and has introduced a requirement for additional information to be provided to the competent authorities concerning certain intra-EU transfers as set out in Article 22(9) of the Regulation.  (Article 51, par. 8 and 9 of the Defence-Related Products and Dual-Use Items and Technologies Export Control Act, State Gazette No 26/29.3.2011, effective 30.6.2012).
Cyprus	There are no other requirements than those specified in the Regulation.
Czech Republic	Act No 594/2004 Coll. extends controls with regard to intra-EU transfers from the Czech Republic as set out in Article 22(2) of the Regulation.
Estonia	The Strategic Goods Act §3(6) extends controls with regard to intra-EU transfers as stipulated in Article 22(2) of the Regulation.
Finland	None.
Germany	Section 11 of the Foreign Trade and Payments Regulation of 2 August 2013 (Aussenwirtschaftsverordnung — AWV) extends controls with regard to intra-EU transfers from Germany as set out in Article 22(2) of the Regulation.
Greece	Section 3.4 of Ministerial Decision No 121837/E3/21837 of 28 September 2009 extends controls with regard to intra-EU transfers from Greece as set out in Article 22(2) of the Regulation.
Hungary	Par. 16 of the Government Decree No 13 of 2011 'on the foreign trade authorisation of dual-use items' adopts licensing requirement on listed dual-use items for transfers within the EU if the conditions stipulated in Article 22(2) of the Regulation apply.
Ireland	There are no national authorisation requirements for intra-community transfers. Authorisation requirements are only in respect of items listed

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	in Annex IV.
Italy	None.
Latvia	No national requirements.
Luxemburg	An authorisation shall be required for the transfer of dual-use items, other than those listed in Annex IV to Regulation (EC) No 428/2009, from the territory of the Grand Duchy of Luxembourg to another Member State of the European Union in the cases provided for in Article 22 (2) of Regulation (EC) No 428/2009 (Law, art. 44).
Netherlands	An authorisation requirement for intra-EU transfers may be imposed in individual cases with regard to dual-use items not listed in Annex IV to the Regulation.
Romania	No specific requirements. We just ask our economic operators to inform their partners that it is about dual use items
Slovakia	Par. 23(2) of the Act No 39/2011 Coll. extends controls with regard to intra-EU transfers from the Slovak Republic, as set out in Article 22(2) of the Regulation.
Slovenia	None.
Spain	Prior registration required.
Sweden	None.

**Table 17: National General Authorization for items listed in part I of Annex IV**

Member State	National General Authorization
Austria	No.
Belgium	No.
Bulgaria	No.

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Czech Republic	No.
Croatia	No.
Cyprus	No.
Denmark	No.
Estonia	No.
Finland	No.
Germany	No.
Greece	Yes, for all EU MS.
Hungary	No.
Ireland	No.
Italy	No.
Latvia	No.
Luxembourg	No.
Malta	No.
Netherlands	No.
Poland	No.
Portugal	No.
Romania	No.

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Slovakia	No.
Slovenia	No.
Spain	No.
Sweden	No.

6. The measures pursuant to paragraphs 1 and 2 shall not involve the application of internal frontier controls within the Community, but solely controls which are performed as part of the normal control procedures applied in a non-discriminatory fashion throughout the territory of the Community.

**Comment:**

The possibility to control intra-EU transfers of certain dual-use items appears to be in contradiction with the essence of the internal market. Therefore, if for CFSP-related reasons it has been decided to establish such controls, at first sight incompatible with Title II, Chapter 9 of the Euratom Treaty (“the Nuclear Common Market”) as well as Article 36 TFEU, the aforesaid controls have to be periodically reviewed by the Council and, eventually, abolished if the appropriateness thereof disappears. See also the Recital 12 of this Regulation.

7. Application of the measures pursuant to paragraphs 1 and 2 may in no case result in transfers from one Member State to another being subject to more restrictive conditions than those imposed for exports of the same items to third countries.

8. Documents and records of intra-Community transfers of dual-use items listed in Annex I shall be kept for at least three years from the end of the calendar year in which a transfer took place and shall be produced to the competent authorities of the Member State from which these items were transferred on request.

9. A Member State may, by national legislation, require that, for any intra-Community transfers from that Member State of items listed in Category 5, Part 2 of Annex I which are not listed in Annex IV, additional information concerning those items shall be provided to the competent authorities of that Member State.

**Comment:**

This provision concerns certain dual-use items related to cryptography not listed in Annex IV and therefore not submitted to transfer licence (certain items listed under 5A002, 5B002, 5D002, 5E002). It gives the possibility for Member States to require additional information to be provided by the industries concerned which could not take the form or lead indirectly to a transfer authorisation.

Presently **Bulgaria, Czech Republic, France, and Slovakia** have established such provision.

**Cryptology related items that potentially require “additional information” to be**

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### transferred between Member States:

- **Bulgaria:** additional information **could be** required by the Interdepartmental Commission (article 51.9 Defense related products and dual use items and technologies export control act, State Gazette 26, 29/3/2012);
- **France: prior declaration** that after assessment by the *Agence nationale de la sécurité des systèmes d'information* **could induce the necessity to obtain an authorisation** (national list of items with no reference to Annex I of the Regulation):
  - o *Décret n°2007-663 du 2 mai 2007 pris pour l'application des articles 30, 31 et 36 de la loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique et relatif aux moyens et aux prestations de cryptologie:*
  - o *Arrêté du 25 mai 2007 définissant la forme et le contenu des dossiers de déclaration et de demande d'autorisation d'opérations relatives aux moyens et aux prestations de cryptologie.*
- **Slovakia: additional information could be required.**  
Article I, section 23.5, of the law no. 39/2011: “persons transporting dual use goods under a special regulation (category 5, part 2 of the Annex I. of the Regulation no. 428/2009) and which are not listed pursuant to special legislation (the Annex IV of the Regulation No. 428/2009) within member states from the Slovak Republic territory provide to the Ministry or body controls **upon their request additional information concerning those items**”.

10. The relevant commercial documents relating to intra-Community transfers of dual-use items listed in Annex I shall indicate clearly that those items are subject to controls if exported from the Community. Relevant commercial documents include, in particular, any sales contract, order confirmation, invoice or dispatch note.

## Article 23

### Article 23

1. A Dual-Use Coordination Group chaired by a representative of the Commission shall be set up. Each Member State shall appoint a representative to this Group.

It shall examine any question concerning the application of this Regulation which may be raised either by the chair or by a representative of a Member State.

2. The Chair of the Dual-Use Coordination Group or the Coordination Group shall, whenever it considers it to be necessary, consult exporters, brokers and other relevant stakeholders concerned by this Regulation.

**Comment:**

The Coordination Group meets several times per year.

Once a year, the Commission and the Presidency of the Council of the European Union organise Strategic Export Control Conferences and convene all the stakeholders concerned by the regulation of the dual-use trade to share their experience and views on the European legislation.

3. The Commission shall submit an annual report to the European Parliament on the activities, examinations and consultations of the Dual-Use Coordination Group, which shall be subject to Article 4 of Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

## *Article 23a*

### ***Article 23a***

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 9(1) and Article 15(3) shall be conferred on the Commission for a period of five years from 2 July 2014. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 9(1) and Article 15(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 9(1) and Article 15(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

***Article 23b***

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 23a(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.

## Article 24

### Article 24

Each Member State shall take appropriate **measures to ensure proper enforcement** of all the provisions of this Regulation. In particular, it shall lay down the **penalties** applicable to infringements of the provisions of this Regulation or of those adopted for its implementation. Those penalties must be effective, proportionate and dissuasive.

**Table 18: Penalties applicable to infringements of the Regulation imposed by Member States**

Member State	Penalties imposed in application of Article 24
Austria	<p>2011 Austrian Foreign Trade Act, (BGBl I 26/2011 as amended by BGBl I Nr. 37/2013):</p> <ul style="list-style-type: none"><li>- bypassing an authorization; giving incorrect or incomplete information to licensing authorities; omission of information; performing an operation after the revocation of the license; violation of a ban to export, import, transit, brokering between third countries, or giving them technical assistance or other transactions: imprisonment up to 3 years</li><li>- intentionally or negligently importing, exporting or transiting goods without required authorisation: fine up to 20.000 Euros</li><li>- contravening an obligation to information: imprisonment up to six weeks or a fine of up to 40.000 Euros.</li></ul>
Belgium	<p><i>Law of 5 August 1991</i></p> <ul style="list-style-type: none"><li>- import, export, transit, without a valid licence; supplying incorrect or incomplete information in view of obtaining a licence: fines from 10.000 to 1 million Euros and/or imprisonment up to 5 years</li></ul> <p><i>Loi générale sur les douanes du 11 septembre 1962 (Art. 10 and 10a, Belgian State Gazette, 27 October 1962) and General Customs and Excise Act of 18 July 1977 (Art.231, 249-253, 263-284)</i></p> <ul style="list-style-type: none"><li>- Attempts to evade a declaration or declarations based on false or fraudulently obtained licences: imprisonment from 4 months to 1 year.</li><li>- the goods concerned shall be confiscated and a fine of 10 times the evaded duties shall be imposed.</li></ul>
Bulgaria	<p>Defence-Related Products and Dual-Use Items and Technologies Export Control Act, in State Gazette No. 26/29.03.2011:</p>

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Member State	Penalties imposed in application of Article 24
	<p>- engaging in:</p> <p>- export, import, transfer, brokering services, transportation and/or transit of defence-related products and of dual-use items without the respective licence, registration or authorisation:</p> <ol style="list-style-type: none"> <li>1. a fine from BGN 1 000 to BGN 50 000 (around 25.000 Euros) for natural persons as well as for officials of commercial companies in case the deed is not a crime;</li> <li>2. a property sanction amounting from BGN 25 000 to BGN 250 000 (around 127.000 Euros) for legal persons and sole traders;</li> <li>3. a fine or a property sanction amounting from BGN 50 000 to BGN 500 000 (around 250.00 Euros) for a repeated violation.</li> </ol> <p>- engaging in activities in violation of the scope and terms of an issued authorisation or certificate, or failing to produce documents, data, information and evidence, or who prevent or refuse access to an official exercising control under this Act:</p> <ol style="list-style-type: none"> <li>1. a fine from BGN 1 000 to BGN 50 000 for natural persons as well as for officials of commercial companies in case the deed is not a crime;</li> <li>2. a property sanction amounting from BGN 5 000 to BGN 50 000 for legal persons and sole traders;</li> <li>3. a fine or a property sanction amounting from BGN 10 000 to BGN 100 000 for a repeated violation.</li> </ol> <p>Criminal Code: imprisonment up to 6 years</p>
Croatia	<p>Art. 22 of the Act on Control of Dual-Use Items (OG 80/11 and 68/2013).</p> <p>(1) A fine in the amount from 50,000 to 500.000 HRK (around 66.000 Euros) shall be imposed on any person or entity - a craftsman if:</p> <ol style="list-style-type: none"> <li>a) exporting dual-use goods, providing brokerage services, providing technical assistance without permission,</li> <li>b) not informing the Ministry that of dual-use goods</li> <li>c) failing to notify the Ministry of the change that occurred after the permit was issued</li> <li>d) transiting dual-use goods after the Ministry of banning transit</li> <li>e) exporting dual-use goods after the Ministry has banned the use of general export license of the European Union.</li> </ol>

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Member State	Penalties imposed in application of Article 24
	<p>(2) A fine in the amount from 50.000 to 100.000 HRK (around 14.000 Euros) shall be imposed for an offense referred to in paragraph 1 this Article, on the responsible person in the legal entity.</p> <p>Art. 23 of the Act on Control of Dual-Use Items (OG 80/11 and 68/2013).</p> <p>(1) A fine in the amount of 50.000 to 100.000 HRK shall be imposed on any person or entity - a craftsman if:</p> <p>a) acts contrary to the issued certificate of dual-use goods</p> <p>b) acts contrary to the provisions of Article 18 the Act on Control of Dual-Use Items;</p> <p>c) fails to notify the Ministry, or no notice at the time, on the export of dual-use or services</p> <p>d) acts contrary to the provisions of Article 13 Paragraph 7 of the Act on Control of Dual-Use Items.</p> <p>(2) A fine in the amount of 5.000 to 10.000 HRK shall be imposed under paragraph 1 this Article, on the responsible person in the legal entity.</p> <p>(3) A fine in the amount of 1.000to 5.000 HRK shall be imposed under paragraph 1 this article and on any other natural person.</p> <p><b>Criminal code:</b> imprisonment for a period of six months to five years.</p>
Cyprus	<p>Ministerial Decree 355 of 2002 and Ministerial Decree 601 of 2004, Regulation of export of dual use goods and technology:</p> <p>Imprisonment of up to 3 years or fine of up to 1.500 CP (around 2.500 Euros) or both, including liability for directors, employees or partners, confiscation of goods (...).</p> <p>Ministerial Order 312/2009.</p>
Czech Republic	<p>Act No. 594/2004 Coll., Implementing the European Community Regime for the Control of Exports, Transfer, Brokering, and Transit of Dual-use Items</p> <ul style="list-style-type: none"> <li>- Fine of up to 800.000 EUR - export, transfer, brokering services and technical assistance without a valid authorisation, breaching a decision prohibiting transit and providing untrue, incorrect, or incomplete information</li> <li>- Fine of up to 200.000 EUR – violation of the terms of the regulation or the law</li> <li>- Prison sentence three to eight years (under the Criminal Code</li> </ul>

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Member State	Penalties imposed in application of Article 24
Denmark	<p>Danish Penal Code Para 114e, see Executive Order No 1007 of 24.10.2012 and Danish Executive Order no 475 of 14 June 2005:</p> <p>Fines or up to 2 years imprisonment. Imprisonment of up to 6 years in aggravated circumstances (...).</p>
Estonia	<p>Criminal Code: Offence of helping to develop, manufacture, transfer or brokering in nuclear, chemical or biological weapons: Imprisonment up to 12 years for WMD related offences.</p> <p><i>Strategic Goods Act, 2004, and Customs Act, 2004</i>: imprisonment of up to 5 years up to 10 years if conducted by a group or by an official taking advantage of his or her official position and confiscation of goods. Administrative fines if notification obligations are not complied with.</p>
Finland	<p>Law 562/1996 on dual-use export control: Art. 12: negligent failure to comply with notification requirements: up to 6 months imprisonment.</p> <p>Penal code Chapter 46 part 1-3 and 12 (on smuggling): unspecified fine and a maximum prison sentence of 2 years. If the crime is committed for an economic benefit or in a planned way and is serious, the maximum imprisonment is 4 years. Only fines for minor offences.</p> <p><i>Customs Law (Act 1299 of 30 Dec. 2003)</i> Art. 30: fine of 10–2.500 Euros if the company/entity has made a minor mistake, such as forgot to renew an existing export licence before its expiry date.</p>
France	<p><i>Customs Code (Codes des Douanes)</i></p> <ul style="list-style-type: none"> <li>- Art. 410-413 bis: 4 classes of violations (1, 2, 3 and 5).</li> <li>- Art. 414 and 414-1: first-class offences such as the illicit trafficking and imports or exports of prohibited goods – of which the dual-use ones are part of – without authorisation. It covers the illegal movement of dual-use goods. In this case: maximum sentence of 5-year prison, the seizure of the item, of the transport means involved, of all the objects which contributed to committing the fraud, of the direct or indirect profits originating from this fraud and a fine amounting up to 3 times the value of the object of the fraud.</li> </ul> <p>The prison sentence may be as high as 10 years – or 20 in case of repeated offence – and the fine 5 times the value of the fraud if these items are considered dangerous as well as listed by an arrêté of the Customs Minister or if the fraud has been committed in the context of organised crime.</p> <ul style="list-style-type: none"> <li>- Art. 415: second-class offence: money laundering related to illicit movement of goods</li> </ul>

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Member State	Penalties imposed in application of Article 24
	<p>Criminal code:</p> <p>for criminal offences imprisonment from 10 to 30 months and fines from €150,000 to €450,000</p>
Germany	<p>German Foreign Trade and Payments Act (<i>Außenwirtschaftsgesetz</i>, AWG):</p> <p>Section 18</p> <ul style="list-style-type: none"> <li>- Imprisonment of up to 5 years or a fine on anyone who violates the Foreign Trade and Payments Ordinance by exporting goods cited in it without a licence, transferring goods cited in it without a licence, undertaking a trafficking and brokering transaction without a licence, providing for technical support without a licence</li> <li>- Imprisonment up to 5 years or a fine for violation of Council Regulation (EC) No. 428/2009, exporting goods without a decision by the competent authority on whether a licence is required or without obtaining an licence from the competent authority, providing a brokering service without an authorisation, providing a brokering service without a decision by the competent authority on whether authorisation is necessary or without obtaining an authorisation from the competent authority.</li> </ul> <p>In case of action committed by a professional member or a group: imprisonment from 1 to 15 years. In case of reiteration, committed by a professional member or a group: imprisonment from 2 to 15 years</p> <p>Section 19</p> <ul style="list-style-type: none"> <li>- Administrative penalties for the person providing incorrect or incomplete data for the issue of licenses and certificates: fine up to 30.000 Euros</li> </ul> <p>Section 20:</p> <ul style="list-style-type: none"> <li>- Possible confiscation of the objects to which the criminal or administrative offence is related, and objects which were used or intended for the committing or preparation.</li> </ul> <p><i>Regulatory Offences Act:</i></p> <p>Art. 130: fine if an offence occurs due to a breach of duty of care, for example as a result of lack of training or compliance procedures: fines of up to 500.000 Euros (company may be punished with an additional administrative fine of up to 1 million Euros).</p> <p>In specified minor offences up to 30.000 Euros</p> <p>Other violations of national or EU export control ordinances, whether intentional or unintentional, are only subject to administrative penalties unless the act is deemed likely to threaten Germany's external security; the peaceful coexistence of nations; and Germany's foreign relations</p>

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Member State	Penalties imposed in application of Article 24
Greece	<p><i>National Customs Code (law 2960/2001)</i></p> <p>- Art. 157: Penalties applying for least and most serious smuggling infringements: violation committed repeatedly or involving three or more accomplices or fraudulent means is considered as more serious and it is punished with at least 1 year of imprisonment. Exporting or importing restricted goods without a license shall amount to smuggling and fines up to the value of the goods to be exported.</p> <p>- Art. 155 par. 2, (b) and art.160 par. 1: export of controlled items without authorisation is assimilated to smuggling and provides for administrative penalties. In addition, as smuggling is a criminal offense, it may be punished with imprisonment, subject to court's judgement.</p> <p><i>Law 4072/2012</i></p> <p>- Art. 36: administrative sanctions to be imposed by the Minister of Economy, Development and Tourism in case of violations of the provisions relating to external trade. Depending on the severity of the violation, the law provides for either temporary suspension of a firm's activities for up to one year or fine up to 100.000 Euros.</p>
Hungary	<p><i>Gov. Decree 13/2011 on foreign trade of dual-use items</i></p> <p>2 types of administrative sanctions if the crime committed is not serious or the perpetrator acted in good faith without criminal intent 3 types of fines depending on the type of violation, its seriousness and the harm caused:</p> <ol style="list-style-type: none"> <li>1. fines ranging from 400-17.000 Euros for false data that might deceive the authority in the licensing procedure, for infringing obligations relating to provision of data keeping, notification, cooperation, declaration, registration, for threatening or infringing non-proliferation commitments or national security interests of Hungary</li> <li>2. fines between 1.700-17.000 Euros for breaches of specific conditions stipulated in licenses: for conducting foreign trade in dual-use items, including brokering activity or the provision of technical assistance, if not in accordance with the terms and conditions of the issued licenses</li> <li>3. fines up to 17.000-34.000 Euros for aggravated circumstances of the second category. It refers to cases when the breach in the terms and conditions of the issued licenses are so serious that it violates foreign and security policy interests of Hungary, as well as its international commitments.</li> </ol> <p>Other penalties (discretionary powers for the Authority): deprive the licensee of his rights or privileges, revocation of license, modification of global licenses i.e. less or items destinations or stricter terms and conditions.</p> <p><i>Criminal Code</i> Chapter XXXI “<i>Criminal Offenses against Economic Sanctions imposed Under International Commitment for Reasons of Public Security</i>”</p>

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Member State	Penalties imposed in application of Article 24
	<p>- Title “<i>Criminal Offenses with Military Items and Services</i>”            Manufacture, marketing, use, possess, transfer, import and export, or transit of military items in an unauthorized way: felony punishable by imprisonment between 2 to 8 years            If the action committed in criminal association with accomplices or on a commercial scale: imprisonment between 5 to 10 years            Engagement in preparations for criminal offenses with military items and services: imprisonment between 1 to 5 years</p> <p>Title “<i>Criminal Offenses with Dual-Use Items</i>”:            Placing dual-use items or supplies military services without authorization, or exceeding the scope of the authorization, or using dual-use items in an unauthorized way: imprisonment between 1 to 5 years</p> <p><b>Engagement in preparation for any criminal offense with dual-use items: imprisonment not exceeding 3 years.</b></p>
Ireland	<p>Article 8 of the Control of Exports Act, 2008, provides for penalties as follows:            (i) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months, or to both, or            (ii) on conviction on indictment to a fine not exceeding the greater of €10,000,000 or, where relevant, 3 times the value of the goods or technology concerned in respect of which the offence was committed, or to imprisonment for a term not exceeding 5 years, or to both such fine and such imprisonment.</p>
Italy	<p><i>Legislative Decree 96/2003</i>            Art. 16: infringements listed in a decreasing order, from the toughest to the softest provision.</p> <ol style="list-style-type: none"> <li>1. export of dual-use goods and technology without license or license obtained with false declarations and/or documentations: administrative sanctions from 25.000 up to 250.000 Euros, criminal penalties going from 3 up to 6 years of imprisonment.</li> <li>2. export in deviation from license’ s obligations: administrative fines go from 15.000 up to 150.000 Euros, imprisonment from 2 up to 4 years. Confiscation is possible. The concerned firm is also constrained to pay the lease of the warehouse where the goods are stored during the seizure</li> <li>3. confiscation of concerned goods is also provided for the crimes under the paragraphs 1 and 2, according to article 444 of the Italian penal code</li> <li>4. omission of notification to national competent authorities in case there is a risk of diversion for concerned goods and technology: only criminal penalties, with imprisonment up to 2 years</li> <li>5. omission of record-keeping for at least 3 years, or the non transmission of information upon request of competent authority: only administrative fines from 15.000 up to 90.000 Euros.</li> </ol> <p><i>Law 689/1981</i>            Art. 13:            When a case entails an administrative fine, the competent authorities can</p>

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Member State	Penalties imposed in application of Article 24
	<p>assume information, make inspections on the places different from private homes, take samples, seizure the goods that can be object of confiscation as provided by the Procedural Criminal Code.</p> <p>Art. 17: In case of seizure, the competent authorities must inform the Ministry of Economic Development.</p>
Latvia	<p><i>Latvian Administrative Violations Code (Until 01.07.2020)</i></p> <p>Section 179.1 Violation of Regulations for the Manufacture, Storage and Use of Goods of Strategic Significance</p> <p>In the case of violation in commercial activities of the regulations for the manufacture, storage and use of goods of strategic significance (excluding sources of ionising radiation) -</p> <p>a fine shall be imposed on natural persons in an amount from 210 EUR up to 700 EUR, on legal persons in amount from 280 EUR up to 7100 EUR, with confiscation of the relevant goods or without confiscation.</p> <p>Section 201.10 Violation of the Regulations regarding the Performance of the Customs Regime</p> <p>In the case of violation of the regulations regarding the import, export, movement and transit of goods of strategic significance -</p> <p>a fine shall be imposed on natural persons in an amount from 70 EUR up to 570 EUR, but for legal persons from 350 EUR up to 7100 EUR, with or without the confiscation of the relevant goods.</p> <p>In the cases of the violations provided for in Paragraph four of this Section, if they have been recommitted within a year after the imposition of an administrative sanction -</p> <p>a fine shall be imposed on natural persons in an amount from 350 EUR up to 700 EUR, but for legal persons from 1400 EUR up to 14 000 EUR, with the confiscation of the relevant goods.</p> <p><i>Law on circulation of strategic goods (after 01.07.2020)</i></p> <p>a fine shall be imposed on natural persons in an amount from 50 EUR up to 350 EUR, but for legal persons from 280 EUR up to 3000 EUR</p> <p><i>The Criminal Law</i></p> <p>Section 190.1 Movement of Goods and Substances the Circulation of which is Prohibited or Specially Regulated across the State border of the</p>

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Member State	Penalties imposed in application of Article 24
	<p>Republic of Latvia</p> <p>(1) For a person who commits moving of a narcotic or psychotropic substance, the source material (precursor) intended for the manufacture of such substances, new psychoactive substance or a product containing it the handling of which is prohibited or restricted, as well as radioactive or hazardous substance, goods of strategic importance or other valuable property, explosive, weapon and ammunition across the State border of the Republic of Latvia in any illegal way,</p> <p>the applicable punishment is the deprivation of liberty for a period of up to five years or temporary deprivation of liberty, or community service, or a fine, with or without the confiscation of property.</p> <p>(2) For the commission of the same acts, if they have been committed by a group of persons according to a prior agreement, or if they have been committed on a large scale,</p> <p>the applicable punishment is the deprivation of liberty for a period of up to ten years, with or without the confiscation of property.</p> <p>(3) For the commission of the same acts, if they have been committed by an organised group,</p> <p>the applicable punishment is deprivation of liberty for a period up to twelve years, with or without confiscation of property, with probationary supervision for a period up to three years, with deprivation of the right to engage in entrepreneurial activity of a specific type or of all types or to engage in specific employment or the right to take up a specific office for a period up to five years.</p> <p>Section 237.1 Violation of the Provisions for the Circulation of Goods of Strategic Significance</p> <p>(1) For a person who commits the violation of the provisions for the circulation of goods of strategic significance, if substantial harm has been caused thereby,</p> <p>the applicable punishment is the deprivation of liberty for a period of up to one year or temporary deprivation of liberty, or community service, or a fine.</p> <p>(2) For a person who commits the violation of the prohibition of the circulation of equipment, devices or instruments or the components or software thereof specially created or adapted for investigatory operational measures or for disturbance thereof,</p> <p>the applicable punishment is the deprivation of liberty for a period of up to</p>

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Member State	Penalties imposed in application of Article 24
	<p>two years or temporary deprivation of liberty, or community service, or a fine, with the deprivation of the right to engage in specific employment for a period of up to five years.</p>
Lithuania	<p><b>Criminal code:</b></p> <ul style="list-style-type: none"> <li>- art. 199: Any person who carries firearms, ammunition, explosives, explosive or radioactive substances, or other strategic, goods or poisonous, controlled, narcotic or psychotropic substances or precursors of narcotic or psychotropic substances across the state border of the Republic of Lithuania without declaring them at customs or by evading customs inspection in some other way, or without a permit: imprisonment for a term of 3 to 10 years.</li> <li>- article 123 of the Criminal Code provides for responsibility for breaching of international sanctions. Maximum penalty is 5 years of imprisonment.</li> </ul> <p><b>Code of Administrative Offences</b></p> <ul style="list-style-type: none"> <li>- article 189: Administrative responsibility for the import, transit or export of strategic goods without an appropriate licence: fine up to 10.000 Litass (2.896,20 Euros). For violations of the procedure of strategic goods control: fine up to 1.000 Litass (289,62 Euros).</li> </ul>
Luxembourg	<p><i>Law of 27 June 2018 on export control (as amended).</i></p> <p>Administrative sanctions:</p> <ul style="list-style-type: none"> <li>- Prohibition, limited to six months or definite, to carry out one or more activities, a suspension for a maximum period of six months from the use of any authorization or fines up to 1250€ per day, however not exceeding 25,000€ in total. (Art. 54 Law of 27 June 2018 on export control)</li> </ul> <p>Criminal sanctions:</p> <ul style="list-style-type: none"> <li>- Criminal fines from 251€ to 1,000,000€, imprisonment from 8 days to 10 years or by one of those penalties only (Art. 57 – 61 Law of 27 June 2018 on export control)</li> </ul> <p>(N.B.: If the non-observation of a restrictive measure results in a substantial financial gain, the fine may be increased to four times the amount subject to the offense. Art. 58 Law of 27 June 2018 on export control).</p>
Malta	<p>Dual-Use Items (Export Control) Regulations, 2004 – Legal Notice 416 of 2004:</p> <ul style="list-style-type: none"> <li>- violation of the ban to export to any destination any dual use items if</li> </ul>

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Member State	Penalties imposed in application of Article 24
	<p>there is the suspicion that the items are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons, unless that person has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used: imprisonment of up to 5 years or a fine not exceeding 50.000 Maltese Liri (116.468,46 Euros).</p>
<p style="text-align: center;">Netherlands</p>	<p><i>1950 Economic Offences Act</i></p> <p>- Art. 6: Warning or fine for unauthorized export. For misdemeanours, the maximum prison term is 1 year. In addition, a fine of category 4 (maximum 16.750 Euros), and community service can be imposed. For felony offences, the maximum imprisonment is 6 years, and penalties can include community service and a category-5 fine (maximum 67.000 Euros).</p> <p><i>Strategic Services Act of 29 September 2011</i> Art. 30 Infringements are punished by imprisonment of up to 1 year or fines of up to 19.000 Euros.</p> <p><i>General Customs Act of 3 April 2008</i> Declarations submitted with a licence, but not in line with the conditions of the licence, are punished with a fine (maximum 7.600 euro) or imprisonment of up to 6 months. Intentional cases are punished with imprisonment of up to 4 or 6 years and a fine of ranging from maximum 19.000 euro to maximum 76.000 euro (depending of the criminal offence).</p> <p><i>Criminal Code:</i></p> <p>If the violation is intentional, it is a crime. Conspiracy to violate export control laws and attempting to falsify an end-user document are punishable crimes.</p>
<p style="text-align: center;">Poland</p>	<p><i>Law of 29 November 2000 on foreign trade in goods, technologies and services of strategic importance to the security of the State and to maintaining international peace and security (Law on the export control) amended on 2 July 2004</i></p> <p>- Art. 33.1: a person trading in strategic goods (DU goods or arms) without an authorisation, or in contravention thereof may be punished by imprisonment for up to 10 years. - Art. 33.2: if a person carries out trade in violation of the conditions set forth in the authorisation and acts without intent, and if this person</p>

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Member State	Penalties imposed in application of Article 24
	<p>undertakes a command (trade contrary to authorization, without intent, plus compliance action), the person shall be liable to a fine, non-custodial sentence (community works) or imprisonment of up to 2 years.</p> <ul style="list-style-type: none"> <li>- Art. 33a: false or incomplete information in an application submitted for a trade authorisation is liable to a fine, non-custodial sentence (community works) or imprisonment of up to 2 years.</li> <li>- Art. 33.4: in these 3 cases, the court may also issue a forfeiture order with respect to items in question or other items used in order to commit the offence or resulting from such offence, including cash and securities</li> <li>- Art. 37: any company (i.e. a legal person) carrying out trade without valid authorisation, is liable to a financial penalty of up to 200.000 PLN (imposed by the trade control authority by way of an administrative decision) and imprisonment up to 10 years.</li> <li>- Art. 38: if an enterprise carries out a trading activity in contravention of the conditions set forth in the authorisation, the enterprise is liable to a financial penalty of up to 100.000 PLN (25.000 Euros). The same applies if the enterprise provides false or incomplete information in its application for the authorization.</li> </ul>
<b>Portugal</b>	<p><i>Decree-Law 436/91 of 8 November 1991:</i></p> <p>Imprisonment of up to 2 years and fine of up to €30,000.</p>
<b>Romania</b>	<p><i>Governance Ordinance 119/2010</i> Art. 34</p> <ul style="list-style-type: none"> <li>- All the operations with dual-use items made without a licence, are considered criminal offence and punished by prison between 2 and 5 years</li> <li>- fines for infringement of legal provision regarding the operations with dual use items are up to 6000 EUR.</li> </ul> <p><i>Criminal Code</i> Art. 302</p> <p>Non-observance of the end-user and final destination declarations of strategic goods constitutes contravention: punished with fines.</p> <p>Non-observance of the authorisation and licensing procedures, in accordance with the framework law: disciplinary, administrative or criminal penalties.</p>

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Member State	Penalties imposed in application of Article 24
Slovenia	<p><i>2001 Export Control of Dual-Use Goods Control Art. 13</i></p> <p>(1) Legal persons, individual sole traders or individuals who perform the activities independently, shall be fined for the offences from EUR 1,200 to 125,000, if they:</p> <ul style="list-style-type: none"> <li>- export dual-use goods without the authorization from Article 3(1), and Article 4(1), (2), and (3) of Regulation 428/2009/EC, transfer them in the Community without the authorization from Article 22 of Regulation 428/2009/EC, provide brokerage services referred to in Article 5(1) of Regulation 428/2009/EC, or provide technical assistance under Article 3a of this Act without authorization;</li> <li>- fail to notify the ministry that dual-use items which they propose to export, are intended, in their entirety or in part, for any of the uses referred to in Article 4(1), (2), and (3) of Regulation 428/2009/EC, and that they were aware of this fact (Article 4(4) of Regulation 248/2009/EC);</li> <li>- perform transit for which the ministry issued a decision on the prohibition of transit (Article 6(1) of Regulation 428/2009/EC);</li> <li>- fail to keep detailed registers or records of their exports and brokering services (Article 20(1) and (2) of Regulation 428/2009/EC), and a register on the provision of technical assistance (Article 3a (3) of this Act);</li> <li>- fail to submit, on the request of the competent authority, detailed registers or records of their export, transfer and brokering services (Article 20(3) of Regulation 428/2009/EC), and the information on providing technical assistance (Article 10(3) of this Act).</li> </ul> <p>(2) The responsible person of the legal person who commits an offence referred to in the preceding paragraph shall also be fined from EUR 120 to 4,100 for the offence referred to in the paragraph above.</p> <p>(3) A private individual shall be fined from EUR 120 to 1,200 for committing an offence referred to in paragraph 1 above.</p> <p><i>Decree on the procedures for issuing authorisations and certificates and on competence of the Commission for the control of exports of dual use items Art. 10a</i></p> <p>Lacking of reporting: administrative fine from 100 to 10.000 Euros.</p> <p><i>Criminal Code:</i></p> <p>Prison sentences of up to 5-10 years.</p> <p><i>Liability of Legal Persons for Criminal Offences Act</i>  <i>Act regulating the control of exports of dual-use items (ZNIBDR).</i></p>
Slovakia	<p><i>Act 26/2002 (Trading in Dual-use Goods) modified by Law no 39/2011):</i></p> <p>Penalties for violation of export prohibitions and restrictions with regard to sensitive items: they vary depending on the gravity of offence. They may</p>

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Member State	Penalties imposed in application of Article 24
	<p>include a fine of up to 10.000.000 SKK (up to 331.939,18 Euros), or three times value of goods if the value exceeds 331.939,18 Euros, the forfeiture of controlled goods.</p> <p><i>Criminal Code</i> Imprisonment up to 8 years</p> <p><i>Act 199/2004, Customs Act</i> - Section 74: In case of customs tort/delict: depending on the gravity of the infringement of customs rules, fine of up to EUR 99.581,75. In case of imports, exports or transports rough diamonds contrary to the customs rules or to a special rule: fine of up to EUR 331.939,18. Possible confiscation of goods.</p> <p>- Section 80: In case of failure to comply with a customs officer's request or otherwise preventing the customs officer in the discharge of his/her duties: reprimand In case of customs offences (minor): depending on the gravity of the infringement of customs rules, fine of up to 3.319,39 Euros. If related to exports or transports rough diamonds: fine of up to 33.193,91 Euros. In summary procedure: fine up to 1.659,69 Euros. In ticket procedure: fine up to 331,93 Euros. Possible confiscation and forfeiture.</p> <p>- Section 84b: If customs tort/delict or customs offence by presenting incorrect data or false data: fine reduced to one tenth if the declarant itself discloses presenting of incorrect data or false data to the customs office which has decided on the release of the goods.</p>
Spain	<p><i>Anti-smuggling Act, Organic Law from 1995, modified in 2015 (Ley Orgánica 12/1995, de 12 de diciembre, de Represión del Contrabando)</i></p> <p>- Art. 2.2. c.1: Crime of unauthorized export of defence or dual-use material, worth at least 50.000 Euros, or the export of such with an authorization obtained by means of a fraudulent or incomplete declaration</p> <p>- Art. 2.4: crime if there is commitment of a plurality of smaller smuggling acts whose individual value does not reach the level of a crime, but whose accumulated value equals or surpasses the 50.000 Euros</p> <p>- Art. 3: imprisonment of up to 5 years and a fine of up to 6 times the value of the smuggled dual-use goods. If the crime was committed by or on behalf of persons, entities or organisations whose nature or activity make it</p>

## Article 24

Member State	Penalties imposed in application of Article 24
	<p>particularly easy to commit, the penalty will be imposed at the higher degree. In case of criminal liability of a legal person, a fine of 2 to 4 times the value of the goods will be imposed.</p> <p>- Art. 11: fine depending on the value of the smuggled dual-use goods (if the value of the smuggled dual-use goods is inferior to 50.000 Euros, only fine).</p> <p>3 types: minor (when the value of the smuggled items is less than 6.000 Euros), serious (between 6.000 and 18.000 Euros) or very serious (more than 18.000 Euros but less than 50.000 Euros).</p> <p>- Art. 5: any penalty imposed for a crime of dual-use goods smuggling, entails the confiscation of all goods, property, profit obtained, as well as instruments, machinery and means of transport involved in the crime perpetrated. If seizure is not possible, the monetary equivalent will be confiscated.</p> <p><i>Law 53/2007 controlling the external trade in defence and dual-use items (Ley 53/2007, de 28 de diciembre, sobre el control del comercio exterior de material de defensa y de doble uso) implemented through the Royal Decree 679/2014</i></p> <p>- Art. 22.8: aggravating factors for antismuggling crimes if the author is a recidivist. Any person, who has been sentenced in criminal proceedings for the same type of violation, will face aggravation as to their responsibility, although among the published sentences regarding dual-use smuggling crimes there cannot be found any relevant example.</p>
Sweden	<p><i>Swedish Act on the Control of Dual-use Items and Technical Assistance SFS 2000:1064</i></p> <p>Offences of export control concerning dual use items and technical assistance are only sanctioned with criminal penalties. The criminal penalties are:</p> <ul style="list-style-type: none"> <li>- fine up to 150 000 SEK, or</li> <li>- prison sentence of up to six years</li> </ul> <p>furthermore, property (such as goods and money) that relates to the commission of a crime can be forfeited.</p>

**Table 19: Circumstances  
when infringements are regarded as criminal offences**

Circumstances when infringements are regarded as criminal offences		
Member State	In any event	In intentional cases only
Austria	X	
Belgium	X	
Bulgaria		X
Croatia	X	
Cyprus		X
Czech Republic	X	
Denmark	X	
Estonia		X
Finland		X
France	X	
Germany	X	
Greece	Decision of the Court of Justice	Decision of the Court of Justice
Hungary		X
Ireland	guided by relevant legal advice on a case by case basis	
Italy	X	
Latvia		X
Lithuania		X
Luxembourg		X
Malta	X	
Netherlands		X
Poland	X	
Portugal		
Romania	X	
Slovenia		X
Slovakia		X
Spain		X
Sweden		X (or gross negligence)

## Article 25

1. Each Member State shall inform the Commission of the laws, regulations and administrative provisions adopted in implementation of this Regulation, including the measures referred to in Article 24. The Commission shall forward the information to the other Member States.

2. Every 3 years the Commission shall review the implementation of this Regulation and present a comprehensive implementation and impact assessment report to the European Parliament and the Council, which may include proposals for its amendment. Member States shall provide to the Commission all appropriate information for the preparation of the report.

3. Special sections of the report shall deal with:

(a) the Dual-Use Coordination Group and its activities. Information that the Commission provides on the Dual-Use Coordination Group's examinations and consultations shall be treated as confidential pursuant to Article 4 of Regulation (EC) No.1049/2001. Information shall in any case be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information;

(b) the implementation of Article 19(4), and shall report on the stage reached in the set-up of the secure and encrypted system for the exchange of information between Member States and the Commission;

(c) the implementation of Article 15(1);

(d) the implementation of Article 15(2);

(e) comprehensive information provided on the measures taken by the Member States pursuant to Article 24 and notified to the Commission under paragraph 1 of this Article.

4. No later than 31 December 2013, the Commission shall submit to the European Parliament and to the Council a report evaluating the implementation of this Regulation with a specific focus on the implementation of Annex IIb, Union General Export Authorisation No. EU002, accompanied by, if appropriate, a legislative proposal to amend this Regulation, in particular as regards the issue of low-value shipments.

### Comment:

The wording of the first paragraph has remained almost identical since the first Regulation (3381/94) and reports were issued in 1997 and 2004. A request of an "impact assessment" and a more detailed report were strongly supported by the European Parliament, which has become co-legislator together with the Council, since the entry into force of the Lisbon Treaty. The first post-Lisbon report was published on October 2013.<sup>112</sup> The latest report was published on 14 December 2018. 113

<sup>110</sup>Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. (Brussels, 16/10/2013 COM(2013) 710 final). Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0710:FIN:EN:PDF>.

<sup>113</sup> Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. (Brussels, 14/12/2018 COM(2018) 852 final). Available at: [http://trade.ec.europa.eu/doclib/docs/2018/december/tradoc\\_157592.pdf](http://trade.ec.europa.eu/doclib/docs/2018/december/tradoc_157592.pdf).

## Article 25a

Without prejudice to the provisions on mutual administrative assistance agreements or protocols in customs matters concluded between the Union and third countries, the Council may authorise the Commission to negotiate with third countries agreements providing for the mutual recognition of export controls of dual-use items covered by this Regulation and in particular to eliminate authorisation requirements for re-exports within the territory of the Union. These negotiations shall be conducted in accordance with the procedures established in Article 207(3) of the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community, as appropriate.

### Comment:

This new provision that stems from the initial Commission recast proposal (Doc COM(2006) 829 final December 2006 (Article 22)) has been (re)inserted under the impetus of the European Parliament. Nevertheless, it is not clear yet how it might be implemented. A parallel would be drawn with the nuclear trade sector, where different bilateral agreements were signed by the EU with Canada, Japan, the United States of America, Kazakhstan and South Africa, on one hand, to facilitate the transfers of nuclear materials and, on the other hand, to reinforce an efficient application of safeguards and export controls.

Such agreements are published in the *Official Journal of the European Union*.<sup>114</sup>

### Complementary information:

Article 207 (3) of the Treaty on the Functioning of the European Union:

*“3. Where agreements with one or more third countries or international organisations need to be negotiated and concluded, Article 218 shall apply, subject to the special provisions of this Article.*

*The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.*

*The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations”.*

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<sup>114</sup> See for instance Agreement between the Government of Japan and the European Atomic Energy Community for co-operation in the peaceful uses of nuclear energy (OJ L 32, 6/02/2007, p. 65).

## Article 26

This Regulation does not affect:

- the application of Article 296 of the Treaty establishing the European Community,
- the application of the Treaty establishing the European Atomic Energy Community.

### **Comment:**

Article 296 of the EC Treaty (presently 346 TFEU) concerns the exceptions to the application of the Treaty allowing Member States to adopt the measures regarding conventional arms trade and production.

### **Article 346 (ex-Article 296):**

*“ 1. The provisions of this Treaty shall not preclude the application of the following rules:*

*(a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;*

*(b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.*

*2. The Council may, acting unanimously on a proposal from the Commission, make changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply.”*

## *Article 27*

### ***Article 27***

Regulation (EC) No. 1334/2000 is hereby repealed with effect from 27 August 2009. However, for export authorisation applications made before 27 August 2009, the relevant provisions of Regulation (EC) No. 1334/2000 shall continue to apply.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex VI.

*Article 28*

***Article 28***

This Regulation shall enter into force 90 days after the date of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5 May 2009.

*For the Council*  
*The President*  
M. KALOUSEK

## Annexes of the Dual-Use Regulation

### Annex I List of Dual-Use Items

- Category 0: Nuclear materials,
- Category 1: Facilities and equipment
- Category 2: Special materials and related equipment
- Category 3: Materials Processing
- Category 4: Electronics
- Category 5: Computers
- Category 6: Telecommunications and “information security”
- Category 7: Sensors and lasers
- Category 8: Navigation and avionics
- Category 9: Marine Aerospace and Propulsion

#### **Comment: How to understand the dual-use code?**

- The **first digit** (0 to 9) defines the category of the item;
- The **second digit** (A to E) is divided in 5 sub-categories (1: Systems, Equipment and Components, 2: Test, Inspection and Production Equipment, 3: Materials, 4: Software, 5: Technology);
- The **third digit** (0 to 4) defines the international export regime that controls the item (0: Wassenaar Arrangement and Nuclear Suppliers Group (trigger list), 1: Missile Technology Control Regime, 2: Nuclear Suppliers Group (dual use items), 3: Australia Group, 4: Chemical Weapons Convention);
- The **two last digits** define the item itself.
- The EU TARIC Correlation Table allows to connect dual-use Export Control Numbers (ECN) of the EU consolidated dual-use control list on the one hand and customs tariff codes of the EU Customs Combined Nomenclature (CN8) on the other hand. The latest version of this Correlation Table has been published by the European Commission, in January 2020 and it is available on the following link:  
<http://trade.ec.europa.eu/doclib/html/155445.htm>.

#### **Comment:**

Annex I contains, in its preamble, a list of definitions. The terms defined by the Annex are pointed by a single quotation or double quotation marks.  
A single quotation mark refers to a term defined in a technical note.  
A double quotation mark refers to the list of definitions listed in the Annex preamble.

## **Annex IIa Union General Export Authorisation N° EU001**

(Referred to in Article 9(1) of this Regulation)

**Exports to Australia, Canada, Japan, New Zealand, Norway, Switzerland, including Liechtenstein and United States of America<sup>115</sup>**

Issuing authority: European Union

### **Part 1**

This export authorisation is in accordance with Article 9(1) and covers all dual use items specified in any entry in Annex I to this Regulation, except those listed in Annex IIg.

### **Part 2**

This export authorisation is valid throughout the Union for exports to the following destinations: Australia, Canada, Japan, New Zealand, Norway, Switzerland, including Liechtenstein, United States of America.

### **Conditions and requirements for use of this authorisation**

1. Exporters that use this General Export Authorisation (EU 001) shall notify the competent authorities of the Member State where they are established of their first use of this General Export Authorisation no later than 30 days after the date when the first export took place.

Exporters shall also report in the Single Administrative Document the fact that they are using this authorisation EU 001 by indicating in box 44 the reference X002.

2. This General Export Authorisation may not be used if:

- The exporter has been informed by the competent authorities of the Member State in which he is established that the items in question are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons, or if the exporter is aware that the items in question are intended for such use;
- The exporter has been informed by the competent authorities of the Member State in which he is established that the items in question are or may be intended for a military end use as defined in Article 4(2) of this Regulation in a country subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the OSCE or an arms embargo imposed by a binding resolution of the Security Council of

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<sup>115</sup> Since the entry into force of Regulation (EU) No. 2019/496 of the European Council and of the Parliament of 27 March 2019 amending Council Regulation (EC) No 428/2009 by granting a Union general export authorisation for the export of certain dual-use items from the Union to the United Kingdom (Official Journal L851/20, 27/3/2019) the United Kingdom of Great Britain and Northern Ireland are added in the list of beneficiaries of the EU General Export Authorisation 001.

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the United Nations, or if the exporter is aware that the items in question are intended for the above mentioned uses;

- The relevant items are exported to a customs free zone or free warehouse which is located in a destination covered by this authorisation.

3. Reporting requirements attached to the use of this General Export Authorisation and the additional information that the Member State from which the export is made might require on items exported under this authorisation are defined by Member States.

A Member State may require the exporters established in that Member State to register prior to the first use of this General Export Authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within ten working days of receipt.

Where applicable the requirements set out in the first two paragraphs of this point shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

## **Annex IIb Union General Export Authorisation N EU002**

(Referred to in Article 9(1) of this Regulation)

### **Exports of certain dual-use items to certain destinations**

Issuing authority: European Union

#### **Part 1 - items**

This general export authorisation is in accordance with Article 9(1) of this Regulation and covers the following items set out in Annex I to this Regulation:

- 1A001
- 1A003,
- 1A004
- 1C003 b -c
- 1C004
- 1C005
- 1C006
- 1C008
- 1C009
- 2B008
- 3A001a3
- 3A001a6-12
- 3A002c-f
- 3C001
- 3C002
- 3C003
- 3C004
- 3C005
- 3C006

#### **Part 2 – Destinations**

This export authorisation is valid throughout the Union for exports to the following destinations:

- Argentina
- Iceland
- South Africa
- South Korea
- Turkey

#### **Part 3 — Conditions and requirements for use of this authorisation**

1. This authorisation does not authorise the export of items where:

## *Annex IIa*

(1) the exporter has been informed by the competent authorities of the Member State in which he is established as defined in Article 9(6) of this Regulation that the items in question are or may be intended, in their entirety or in part:

(a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons;

(b) for a military end-use as defined in Article 4(2) of this Regulation in a country subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations; or

(c) for use as parts or components of military items listed in national military lists that have been exported from the territory of the Member State concerned without authorisation or in breach of an authorisation prescribed by the national legislation of that Member State;

(2) the exporter, under his obligation to exercise due diligence, is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in subparagraph (1);

(3) the relevant items are exported to a customs-free zone or a free warehouse which is located in a destination covered by this authorisation.

2. Exporters must mention the EU reference number X002 and specify that the items are being exported under Union General Export Authorisation EU002 in box 44 of the Single Administrative Document.

3. Any exporter who uses this authorisation must notify the competent authorities of the Member State where he is established of the first use of this authorisation no later than 30 days after the date when the first export took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of this authorisation. Member States shall notify the Commission of the notification mechanism chosen for this authorisation. The Commission shall publish the information notified to it in the C series of the *Official Journal of the European Union*.

Reporting requirements attached to the use of this authorisation and additional information that the Member State from which the export is made might require on items exported under this authorisation are defined by Member States.

A Member State may require the exporters established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within 10 working days of receipt, subject to Article 9(1) of this Regulation.

## *Annex IIa*

Where applicable the requirements set out in the second and third paragraphs shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

## **Annex IIc Union General Export Authorisation N EU003**

(Referred to in Article 9(1) of this Regulation)

### **Export after Repair / Replacement**

Issuing authority: European Community

#### **Part 1**

2. This general export authorisation covers all dual-use items specified in any entry in Annex I to this Regulation except those listed in paragraph 2 where:

- a. (a) the items were reimported into the customs territory of the European Union for the purpose of maintenance, repair or replacement, and are exported or re-exported to the country of consignment without any changes to their original characteristics within a period of 5 years after the date when the original export authorisation has been granted; or
- b. (b) the items are exported to the country of consignment in exchange for items of the same quality and number which were reimported into the customs territory of the European Union for maintenance, repair or replacement within a period of 5 years after the date when the original export authorisation has been granted.

1(2) Items excluded:

- a. All items specified in Annex IIg,
- b. All items in categories D and E,
- c. Items specified in:
  - 1A002a
  - 1C012a
  - 1C227
  - 1C228
  - 1C229
  - 1C230
  - 1C231
  - 1C236
  - 1C237

## Annex IIb

- 1C240
- 1C350
- 1C450
- 5A001b5
- 5A002a2 to 5A002a9
- *5B002 Equipment as follows:*
  - (a) Equipment specially designed for the "development" or "production" of equipment specified by 5A002a2 to 5A002a9;*
  
  - (b) Measuring equipment specially designed to evaluate and validate the "information security" functions of equipment specified by 5A002a2 to 5A002a9.*
- 6A001a2a1
- 6A001a2a5
- 6A002a1c
- 6A008I3
- 8A001b
- 8A001d
- 9A011

### Part 2

This export authorisation is valid throughout the European Union for exports to the following destinations:

Albania	Mexico
Argentina,	Montenegro
Bosnia and Herzegovina	Morocco
Brazil	Russia
Chile	Serbia
China (including Hong Kong and Macao)	Singapore
Former Yugoslav Republic of Macedonia	South Africa
French Overseas Territories	South Korea
Iceland	Tunisia,
India	Turkey
Kazakhstan	Ukraine
	United Arab Emirates

#### **Comment:**

Exports after repair or exports for maintenance or replacement to Australia, Canada, Japan, New Zealand, Norway, Switzerland, including Liechtenstein, and United States of America

and United Kingdom of Great Britain and Northern Ireland (since the entry into force of Regulation (EU) No. 2019/496), are already covered by the EU001.

### **Part 3**

1. This authorisation can only be used when the initial export has taken place under a Union General Export Authorisation or an initial export authorisation has been granted by the competent authorities of the Member State where the original exporter was established for the export of the items which have subsequently been reimported into the customs territory of the European Union for the purposes of maintenance, repair or replacement. This authorisation is valid only for exports to the original end-user.

2. This authorisation does not authorise the export of items where:

(1) the exporter has been informed by the competent authorities of the Member State in which he is established as defined in Article 9(6) of this Regulation that the items in question are or may be intended, in their entirety or in part,

(a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons;

(b) for a military end-use as defined in Article 4(2) of this Regulation where the purchasing country or country of destination is subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations; or

(c) for use as parts or components of military items listed in the national military list that have been exported from the territory of the Member State concerned without authorisation or in breach of an authorisation prescribed by the national legislation of that Member State;

(2) the exporter is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in subparagraph (1);

(3) the relevant items are exported to a customs-free zone or a free warehouse which is located in a destination covered by this authorisation;

(4) the initial authorisation has been annulled, suspended, modified or revoked;

(5) the exporter, under his obligation to exercise due diligence, is aware that the end-use of the items in question is different from that specified in the original export authorisation.

## *Annex IIb*

3. On exportation of any of the items pursuant to this authorisation, exporters must:

(1) mention the reference number of the initial export authorisation in the export declaration to customs together with the name of the Member State that granted the authorisation, the EU reference number X002 and specify that the items are being exported under Union General Export Authorisation EU003 in box 44 of the Single Administrative Document;

(2) provide customs officers, if so requested, with documentary evidence of the date of importation of the items into the Union, of any maintenance, repair or replacement of the items carried out in the Union and of the fact that the items are being returned to the end-user and the country from which they were imported into the Union.

4. Any exporter who uses this authorisation must notify the competent authorities of the Member State where he is established of the first use of this authorisation no later than 30 days after the date when the first export took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of this authorisation. Member States shall notify the Commission of the notification mechanism chosen for this authorisation. The Commission shall publish the information notified to it in the C series of the *Official Journal of the European Union*.

Reporting requirements attached to the use of this authorisation and additional information that the Member State from which the export is made might require on items exported under this authorisation are defined by Member States.

A Member State may require the exporter established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within 10 working days of receipt, subject to Article 9(1) of this Regulation.

Where applicable the requirements set out in the second and third subparagraphs shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

5. This authorisation covers items for “repair”, “replacement” and “maintenance”. This may involve coincidental improvement on the original goods, e.g. resulting from the use of modern spare parts or from use of a later built standard for reliability or safety reasons, provided that this does not result in any enhancement to the functional capability of the items or provide the items with new or additional functions.

## **Annex II d Union General Export Authorisation N° EU004**

(Referred to in Article 9(1) of this Regulation)

Temporary Export for Exhibition or Fair  
Issuing authority: European Union

### **Part 1**

This general export authorisation covers all dual-use items specified in any entry in Annex I to this Regulation except:

- (a) all items listed in Annex IIg;
- (b) all items in Section D set out in Annex I to this Regulation (this does not include software necessary to the proper functioning of the equipment for the purpose of the demonstration);
- (c) all items in Section E set out in Annex I to this Regulation;
- (d) the following items specified in Annex I to this Regulation:
  - 1A002a
  - 1C002.b.4
  - 1C010
  - 1C012.a
  - 1C227
  - 1C228
  - 1C229
  - 1C230
  - 1C231
  - 1C236
  - 1C237
  - 1C240
  - 1C350
  - 1C450
  - 5A001b5
  - 5A002a2 to 5A002a9
  - *5B002 Equipment as follows:*
    - (a) *Equipment specially designed for the "development" or "production" of equipment specified by 5A002a2 to 5A002a9;*
    - (b) *Measuring equipment specially designed to evaluate and validate the "information security" functions of equipment specified by 5A002a2 to 5A002a9.*
  - 6A001
  - 6A002a
  - 6A00813
  - 8A001b

## *Annex IIc*

- 8A001d
- 9A011

### **Part 2 — Destinations**

This authorisation is valid throughout the Union for exports to the following destinations:

Albania  
Argentina  
Bosnia and Herzegovina  
Brazil  
Chile  
China (including Hong Kong and Macao)  
Former Yugoslav Republic of Macedonia  
French Overseas Territories  
Iceland  
India  
Kazakhstan  
Mexico  
Montenegro  
Morocco  
Russia  
Serbia  
Singapore  
South Africa  
South Korea  
Tunisia  
Turkey  
Ukraine  
United Arab Emirates

**Comment:** Temporary exports or transfers for exhibition or fairs to Australia, Canada, Japan, New Zealand, Norway, Switzerland, including Liechtenstein, and United States of America and United Kingdom of Great Britain and Northern Ireland (since the entry into force of Regulation (EU) No. 2019/496) are already covered by the EU001.

**Part 3 — Conditions and requirements for use of this authorisation**

1. This authorisation authorises the export of items listed in Part 1 on condition that the export concerns temporary export for exhibition or fair as defined in point 6 and that the items are reimported within a period of 120 days after the initial export, complete and without modification, into the customs territory of the European Union.

2. The competent authority of the Member State where the exporter is established as defined in Article 9(6) of this Regulation may, at the exporter's request, waive the requirement that the items are to be reimported as stated in paragraph 1. To waive the requirement, the procedure for individual authorisations laid down in Articles 9(2) and 14(1) of this Regulation shall apply accordingly.

3. This authorisation does not authorise the export of items where:

- (1) the exporter has been informed by the competent authorities of the Member State in which he is established that the items in question are or may be intended, in their entirety or in part: (a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons; (b) for a military end-use as defined in Article 4(2) of this Regulation where the purchasing country or country of destination is subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations; or (c) for use as parts or components of military items listed in the national military list that have been exported from the territory of the Member State concerned without authorisation or in breach of an authorisation prescribed by the national legislation of that Member State;
- (2) the exporter is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in subparagraph (1);
- (3) the relevant items are exported to a customs-free zone or a free warehouse which is located in a destination covered by this authorisation;
- (4) the exporter has been informed by a competent authority of the Member State in which he is established, or is otherwise aware (e.g. from information received from the manufacturer), that the items in question have been classified by the competent authority as having a protective national security classification marking, equivalent to or above *CONFIDENTIEL UE/EU CONFIDENTIAL*;
- (5) their return, in their original state, without the removal, copying or dissemination of any component or software, cannot be guaranteed by the exporter, or where a transfer of technology is connected with a presentation;
- (6) the relevant items are to be exported for a private presentation or demonstration (e.g. in in-house showrooms);
- (7) the relevant items are to be merged into any production process;
- (8) the relevant items are to be used for their intended purpose, except to the minimum extent required for effective demonstration, but without making specific test outputs available to

## *Annex IIc*

third parties;

(9) the export is to take place as a result of a commercial transaction, in particular as regards the sale, rental or lease of the relevant items; (10) the relevant items are to be stored at an exhibition or fair only for the purpose of sale, rent or lease, without being presented or demonstrated;

(11) the exporter makes any arrangement which would prevent him from keeping the relevant items under his control during the whole period of the temporary export.

4. Exporters must mention the EU reference number X002 and specify that the items are being exported under Union General Export Authorisation EU004 in box 44 of the Single Administrative Document.

5. Any exporter who uses this authorisation must notify the competent authorities of the Member State where he is established of the first use of this authorisation no later than 30 days after the date when the first export took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of this authorisation. Member States shall notify the Commission of the notification mechanism chosen for this authorisation. The Commission shall publish the information notified to it in the C series of the *Official Journal of the European Union*.

Reporting requirements attached to the use of this authorisation and additional information that the Member State from which the export is made might require on items exported under this authorisation are defined by Member States.

A Member State may require exporters established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within 10 working days of receipt, subject to Article 9(1) of this Regulation.

Where applicable the requirements set out in the second and third subparagraphs shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

6. For the purpose of this authorisation, “exhibition or fair” means commercial events of a specific duration at which several exhibitors make demonstrations of their products to trade visitors or to the general public.

## **Annex IIe Union General Export Authorisation N° EU005**

(Referred to in Article 9(1) of this Regulation)

Telecommunications

Issuing authority: European Union

### **Part 1 — Items**

This general export authorisation covers the following dual-use items specified in Annex I to this Regulation:

(a) the following items of Category 5, Part 1:

(i) items, including specially designed or developed components and accessories therefore specified in 5A001b2 and 5A001c and d;

(ii) items specified in 5B001 and 5D001, where test, inspection and production equipment is concerned and software for items mentioned under (i);

(b) technology controlled by 5E001a, where required for the installation, operation, maintenance or repair of items specified under (a) and intended for the same end-user.

### **Part 2 — Destinations**

This authorisation is valid throughout the Union for exports to the following destinations:

Argentina

China (including Hong Kong and Macao)

India

Russia

South Africa

South Korea

Turkey

Ukraine

### **Part 3 — Conditions and requirements for use of this authorisation**

1. This authorisation does not authorise the export of items where:

(1) the exporter has been informed by the competent authorities of the Member State in which he is established as defined in Article 9(6) of this Regulation that the items in question are or may be intended, in their entirety or in part:

## *Annex II d*

- (a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons;
  - (b) for a military end-use as defined in Article 4(2) of this Regulation where the purchasing country or country of destination is subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations;
  - (c) for use as parts or components of military items listed in the national military list that have been exported from the territory of the Member State concerned without authorisation or in breach of an authorisation prescribed by the national legislation of that Member State; or
  - (d) for use in connection with a violation of human rights, democratic principles or freedom of speech as defined by the Charter of Fundamental Rights of the European Union, by using interception technologies and digital data transfer devices for monitoring mobile phones and text messages and targeted surveillance of Internet use (e.g. via Monitoring Centres and Lawful Interception Gateways);
- (2) the exporter, under his obligation to exercise due diligence, is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in subparagraph 1;
- (3) the exporter, under his obligation to exercise due diligence, is aware that the items in question will be re-exported to any destination other than those listed in Part 2 of this Annex or in Part 2 of Annex IIa or to Member States;
- (4) the relevant items are exported to a customs-free zone or a free warehouse which is located in a destination covered by this authorisation.

2. Exporters must mention the EU reference number X002 and specify that the items are being exported under Union General Export Authorisation EU005 in box 44 of the Single Administrative Document.

3. Any exporter who uses this authorisation must notify the competent authorities of the Member State where he is established of the first use of this authorisation no later than 30 days after the date when the first export took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of this authorisation. Member States shall notify the Commission of the notification mechanism chosen for this authorisation. The Commission shall publish the information notified to it in the C series of the *Official Journal of the European Union*.

Reporting requirements attached to the use of this authorisation and additional information that the Member State from which the export is made might require on items exported under this authorisation are defined by Member States.

A Member State may require exporters established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the

## *Annex II*

competent authorities to the exporter without delay and in any case within 10 working days of receipt, subject to Article 9(1) of this Regulation.

Where applicable the requirements set out in the second and third subparagraphs shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

## **Annex II Union General Export Authorisation N° EU006**

(Referred to in Article 9(1) of this Regulation)

Issuing authority: European Union

Chemicals

### **Part 1 — Items**

This general export authorisation covers the following dual-use items specified in Annex I to this Regulation:

1C350:

1. Thiodiglycol (111-48-8);
2. Phosphorus oxychloride (10025-87-3);
3. Dimethyl methylphosphonate (756-79-6);
5. Methylphosphonyl dichloride (676-97-1);
6. Dimethyl phosphite (DMP) (868-85-9);
7. Phosphorus trichloride (7719-12-2);
8. Trimethyl phosphite (TMP) (121-45-9);
9. Thionyl chloride (7719-09-7);
10. 3-Hydroxy-1-methylpiperidine (3554-74-3);
11. N,N-Diisopropyl-(beta)-aminoethyl chloride (96-79-7);
12. N,N-Diisopropyl-(beta)-aminoethane thiol (5842-07-9);
13. Quinuclidin-3-ol (1619-34-7);
14. Potassium fluoride (7789-23-3);
15. 2-Chloroethanol (107-07-3);
16. Dimethylamine (124-40-3);
17. Diethyl ethylphosphonate (78-38-6);
18. Diethyl-N,N-dimethylphosphoramidate (2404-03-7);
19. Diethyl phosphite (762-04-9);
20. Dimethylamine hydrochloride (506-59-2);
21. Ethyl phosphinyl dichloride (1498-40-4);
22. Ethyl phosphonyl dichloride (1066-50-8);
24. Hydrogen fluoride (7664-39-3);
25. Methyl benzilate (76-89-1);
26. Methyl phosphinyl dichloride (676-83-5);
27. N,N-Diisopropyl-(beta)-amino ethanol (96-80-0);
28. Pinacolyl alcohol (464-07-3);
30. Triethyl phosphite (122-52-1);
31. Arsenic trichloride (7784-34-1);
32. Benzilic acid (76-93-7);
33. Diethyl methylphosphonite (15715-41-0);
34. Dimethyl ethylphosphonate (6163-75-3);
35. Ethyl phosphinyl difluoride (430-78-4);
36. Methyl phosphinyl difluoride (753-59-3);
37. 3-Quinuclidone (3731-38-2);
38. Phosphorus pentachloride (10026-13-8);
39. Pinacolone (75-97-8);

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40. Potassium cyanide (151-50-8);
41. Potassium bifluoride (7789-29-9);
42. Ammonium hydrogen fluoride or ammonium bifluoride (1341-49-7);
43. Sodium fluoride (7681-49-4);
44. Sodium bifluoride (1333-83-1);
45. Sodium cyanide (143-33-9);
46. Triethanolamine (102-71-6);
47. Phosphorus pentasulphide (1314-80-3);
48. Di-isopropylamine (108-18-9);
49. Diethylaminoethanol (100-37-8);
50. Sodium sulphide (1313-82-2);
51. Sulphur monochloride (10025-67-9);
52. Sulphur dichloride (10545-99-0);
53. Triethanolamine hydrochloride (637-39-8);
54. N,N-Diisopropyl-(Beta)-aminoethyl chloride hydrochloride (4261-68-1);
55. Methylphosphonic acid (993-13-5);
56. Diethyl methylphosphonate (683-08-9);
57. N,N-Dimethylaminophosphoryl dichloride (677-43-0);
58. Triisopropyl phosphite (116-17-6);
59. Ethyldiethanolamine (139-87-7);
60. O,O-Diethyl phosphorothioate (2465-65-8);
61. O,O-Diethyl phosphorodithioate (298-06-6);
62. Sodium hexafluorosilicate (16893-85-9);
63. Methylphosphonothioic dichloride (676-98-2).

### 1C450 a:

4. Phosgene: Carbonyl dichloride (75-44-5);
5. Cyanogen chloride (506-77-4);
6. Hydrogen cyanide (74-90-8);
7. Chloropicrin: Trichloronitromethane (76-06-2);

### 1C450 b:

1. Chemicals, other than those specified in the Military Goods Controls or in 1C350, containing a phosphorus atom to which is bonded one methyl, ethyl or propyl (normal or iso) group but not further carbon atoms;
2. N,N-Dialkyl [methyl, ethyl or propyl (normal or iso)] phosphoramidic dihalides, other than N,N-Dimethylaminophosphoryl dichloride which is specified in 1C350.57;
3. Dialkyl [methyl, ethyl or propyl (normal or iso)] N,N-dialkyl [methyl, ethyl or propyl (normal or iso)]-phosphoramidates, other than Diethyl-N,N-dimethylphosphoramidate which is specified in 1C350;
4. N,N-Dialkyl [methyl, ethyl or propyl (normal or iso)] aminoethyl-2-chlorides and corresponding protonated salts, other than N,N-Diisopropyl-(beta)-aminoethyl chloride or N,N-Diisopropyl-(beta)-aminoethyl chloride hydrochloride which are specified in 1C350;

## *Annex IIe*

5. N,N-Dialkyl [methyl, ethyl or propyl (normal or iso)] aminoethane-2-ols and corresponding protonated salts; other than N,N-Diisopropyl-(beta)-aminoethanol (96-80-0) and N,N-Diethylaminoethanol (100-37-8) which are specified in 1C350;
6. N,N-Dialkyl [methyl, ethyl or propyl (normal or iso)] aminoethane-2-thiols and corresponding protonated salts, other than N,N-Diisopropyl-(beta)-aminoethane thiol which is specified in 1C350;
8. Methyl-diethanolamine (105-59-9)

### **Part 2 — Destinations**

This authorisation is valid throughout the Union for exports to the following destinations:

Argentina  
Croatia  
Iceland

South Korea  
Turkey  
Ukraine

### **Part 3 — Conditions and requirements for use of the authorisation**

1. This authorisation does not authorise the export of items where:

(1) the exporter has been informed by the competent authorities of the Member State in which he is established as defined in Article 9(6) of this Regulation that the items in question are or may be intended, in their entirety or in part:

- (a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons;
- (b) for a military end-use as defined in Article 4(2) of this Regulation where the purchasing country or country of destination is subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations; or
- (c) for use as parts or components of military items listed in the national military list that have been exported from the territory of the Member State concerned without authorisation or in breach of an authorisation prescribed by the national legislation of that Member State;

(2) the exporter, under his obligation to exercise due diligence, is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in subparagraph 1;

(3) the exporter, under his obligation to exercise due diligence, is aware that the items in question will be re-exported to any destination other than those listed in Part 2 of this Annex or in Part 2 of Annex IIa or to Member States; or

## *Annex IIe*

(4) the relevant items are exported to a customs-free zone or a free warehouse which is located in a destination covered by this authorisation.

2. Exporters must mention the EU reference number X002 and specify that the items are being exported under Union General Export Authorisation EU006 in box 44 of the Single Administrative Document.

3. Any exporter who uses this authorisation must notify the competent authorities of the Member State where he is established of the first use of this authorisation no later than 30 days after the date when the first export took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of this authorisation. Member States shall notify the Commission of the notification mechanism chosen for this authorisation. The Commission shall publish the information notified to it in the C series of the *Official Journal of the European Union*.

Reporting requirements attached to the use of this authorisation and additional information that the Member State from which the export is made might require on items exported under this authorisation are defined by Member States.

A Member State may require exporters established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within 10 working days of receipt, subject to Article 9(1) of this Regulation.

Where applicable the requirements set out in the second and third subparagraphs shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

## **ANNEX IIg**

### **(List referred to in Article 9(4)(a) of this Regulation and Annexes IIa, IIc and IId to this Regulation)**

The entries do not always provide a complete description of the items and the related notes in Annex I. Only Annex I provides a complete description of the items.

The mention of an item in this Annex does not affect the application of the General Software Note (GSN) in Annex I.

- All items specified in Annex IV,
- 0C001 “Natural uranium” or “depleted uranium” or thorium in the form of metal, alloy, chemical compound or concentrate and any other material containing one or more of the foregoing,
- 0C002 “Special fissile materials” other than those specified in Annex IV,
- 0D001 “Software” specially designed or modified for the “development”, “production” or “...” of goods specified in Category 0, in so far as it relates to 0C001 or to those items of 0C002 that are excluded from Annex IV,
- 0E001 “Technology” in accordance with the Nuclear Technology Note for the “development”, “production” or “...” of goods specified in Category 0, in so far as it relates to 0C001 or to those items of 0C002 that are excluded from Annex IV,
- 1A102 Resaturated pyrolysed carbon-carbon components designed for space launch vehicles specified in 9A004 or sounding rockets specified in 9A104,
- 1C351 Human pathogens, zoonoses and “toxins”,
- 1C352 Animal pathogens,
- 1C353 Genetic elements and genetically modified organisms,
- 1C354 Plant pathogens,
- 1C450a.1. amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate (78-53-5) and corresponding alkylated or protonated salts,
- 1C450a.2. PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene (382-21-8),
- 7E104 “Technology” for the integration of flight control, guidance and propulsion data into a flight management system for optimisation of rocket system trajectory,
- 9A009.a. Hybrid rocket propulsion systems with total impulse capacity exceeding 1.1 MNs,

## *Annex IIg*

- 9A117 Staging mechanisms, separation mechanisms and interstages usable in “missiles”.

*Annex IIIa*

**ANNEX IIIa**

(Model for individual or global export authorisation forms)  
(Referred to in Article 14(1) of this Regulation)

When granting the export authorisations, Member States will strive to ensure the visibility of the nature of the authorisation (individual or global) on the form issued.

This is an export authorisation valid in all Member States of the European Union until its expiry date.

EUROPEAN COMMUNITY

EXPORT OF DUAL-USE ITEMS (Reg. (EC) No 428/2009)

<b>LICENCE</b>	1	1. Exporter No	2. Identification number	3. Expiry date (if applicable)		
			4. Contact point details			
		5. Consignee	6. Issuing authority			
		7. Agent/Representative (if different from exporter) No				
		8. Country of origin	Code <sup>116</sup>			
		9 Country of consignment	Code <sup>1</sup>			
	10. End user (if different from consignee)	11. Member State of current or future location of the items	Code <sup>1</sup>			
		12. Member State of intended entry into the customs export procedure	Code <sup>1</sup>			
<b>1</b>		13. Country of final destination	Code <sup>1</sup>			
	14. Description of the items <sup>117</sup>		15. Harmonised System or Combined Nomenclature Code (if applicable with 8 digit; CAS number if available).	16. Control list no (for listed items)		

<sup>116</sup> See Regulation (EC) No 1172/95 (OJ L 118, 25.5.1995, p. 10).

<sup>117</sup> If needed, this description may be given in one or more attachments to this form (1bis). In this case, indicate the exact number of attachments in this box. The description should be as precise as possible and integrate, where relevant, the CAS or other references for chemical items in particular.

*Annex IIg*

		17. Currency and Value	18. Quantity of the items
	19. End use	20. Contract date (if applicable)	21. Customs export procedure
	22. Additional information required by national legislation (to be specified on the form)		
	Available for pre-printed information At discretion of Member States		
		For completion by issuing authority Signature Issuing Authority	Stamp
		Date	

EUROPEAN COMMUNITY

EXPORT OF DUAL-USE ITEMS (Reg. (EC) No 428/2009)

<b>1 Bis</b>	1. Exporter	2. Identification number	
<b>LICENCE</b>			
	14. Description of the items	15. Commodity code (if applicable with 8 digit; CAS number if available)	16. Control list no (for listed items)
		17. Currency and Value	18. Quantity of the items
	14. Description of the items	15. Commodity code (if applicable with 8 digit; CAS number if available)	16. Control list no (for listed items)
		17. Currency and Value	18. Quantity of the items
	14. Description of the items	15. Commodity code	16. Control list no
		17. Currency and value	18. Quantity of the items
	14. Description of the items	15. Commodity code	16. Control list no
		17. Currency and value	18. Quantity of the items
	14. Description of the items	15. Commodity code	16. Control list no
		17. Currency and value	18. Quantity of the items
		17. Currency and value	18. Quantity of the items

## Annex IIg

<i>Note:</i> In part 1 of column 24, write the quantity still available and in part 2 of column 24, write the quantity deducted on this occasion.				
23. Net quantity/value (Net mass/other unit with indication of unit)		26. Customs document (Type and number) or extract (Nr) and date of deduction		27. Member state, name and signature, stamp of deduction
24. In numbers	25. In words for quantity/value deducted			
1.				
2.				
1.				
2.				
1.				
2.				
1.				
2.				

*Annex IIIb*

**ANNEX IIIb**

(Model for brokering services authorisation forms)  
(Referred to in Article 14(1) of this Regulation)

EUROPEAN COMMUNITY

Provision of BROKERING SERVICES (Reg. (EC) No 428/2009)

<b>LICENCE</b>	<b>1</b>	1. Broker/Applicant No	2. Identification number	3. Expiry date (if applicable)	
			4. Contact point details		
		5. Exporter in originating third country	6. Issuing authority		
		7. Consignee in third country of destination No	8. Member State in which the broker is resident or established	Code <sup>118</sup>	
			9. Originating third country/Third country of location of the items subject of brokering services	Code <sup>1</sup>	
		10. End user in third country of destination (if different from consignee)	11. Third country of destination	Code <sup>1</sup>	
			12. Third parties involved, e.g. agents (if applicable)		
	<b>1</b>				
		14. Description of the items.		15. Harmonised System or Combined Nomenclature Code (if applicable)	16. Control list no
			17. Currency and Value	18. Quantity of the items	
	19. End use				
	20. Additional information required by national legislation (to be specified on the form)				
	Available for pre-printed information At discretion of Member States				
		For completion by issuing authority Signature Issuing Authority		Stamp	

<sup>118</sup> See Regulation (EC) No. 1172/95 (OJ L 118, 25.5.1995, p. 10).

*Annex IIIa*

		Date	
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## **ANNEX IIIc**

COMMON ELEMENTS FOR PUBLICATION OF  
NATIONAL GENERAL EXPORT AUTHORISATIONS  
IN NATIONAL OFFICIAL JOURNALS  
(Referred to in Article 9(4)(b) of this Regulation)

1. Title of general export authorisation

2. Authority issuing the authorisation

3. EC validity. The following text shall be used:

"This is a general export authorisation under the terms of Article 9(2) of Regulation (EC) No 428/2009. This authorisation, in accordance with Article 9(2) and (3) of that Regulation, is valid in all Member States of the European Union."

Validity: according to national practices.

4. Items concerned: the following introductory text shall be used:

"This export authorisation covers the following items"

5. Destinations concerned: the following introductory text shall be used:

"This export authorisation is valid for exports to the following destinations"

6. Conditions and requirements

**Annex IV List referred to in Article 22(1) of this Regulation**

**Annex V Repealed Regulation with its successive amendments**

**Annex VI Correlation Table**

**Comment:** The latest version of this Correlation Table has been published by the European Commission, in January 2019 and it is available on the following link:  
<http://trade.ec.europa.eu/doclib/html/155445.htm>.

**Council Joint Action of 22 June 2000 (2000/0401/CFSP)  
concerning the control of technical assistance related to certain  
military end-uses**

Official Journal L 159, 30/06/2000 P. 0216 - 0217

**Preamble**

THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty on European Union, and in particular Article 14 thereof,  
Whereas:

**Complementary information: Article 14 of the Treaty on European Union**

This article was reviewed by the Lisbon Treaty and the term “joint action” is no longer used by the Council. Considering that the difference between a joint action and a common position was, in certain circumstances, misleading, both instruments were replaced by the term “decisions”. The Common Foreign and Security Policy instruments adopted by the Council are presently ruled by Article 31 TEU.

The previous provisions of Article 14 stated:

*“1. The Council shall adopt joint actions. Joint actions shall address specific situations where operational action by the Union is deemed to be required. They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation.*

*2. If there is a change in circumstances having a substantial effect on a question subject to joint action, the Council shall review the principles and objectives of that action and take the necessary decisions. As long as the Council has not acted, the joint action shall stand.*

*3. Joint actions shall commit the Member States in the positions they adopt and in the conduct of their activity.*

*4. The Council may request the Commission to submit to it any appropriate proposals relating to the common foreign and security policy to ensure the implementation of a joint action.*

*5. Whenever there is any plan to adopt a national position or take national action pursuant to a joint action, information shall be provided in time to allow, if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply to measures which are merely a national transposition of Council decisions.*

*6. In cases of imperative need arising from changes in the situation and failing a Council decision, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of the joint action. The Member State concerned shall inform the Council immediately of any such measures.*

*7. Should there be any major difficulties in implementing a joint action, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the joint action or impair its effectiveness.”*

### *Annex IIIb*

(1) On 22 June 2000 the Council adopted Regulation (EC) No. 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology, which provides an effective system of export controls of dual-use items, including software and technology. That Regulation, in Article 4, contains inter alia provisions concerning items not listed in Annex I which are or may be intended for use in connection with weapons of mass destruction or missiles for delivery of such weapons, or in connection with military goods for countries subject to EU, OSCE or UN arms embargoes.

(2) The commitments of the Member States of the European Union regarding the non-proliferation of weapons of mass destruction and the export of conventional military goods to countries subject to arms embargoes require an effective export control system which should also cover, on the basis of common standards, technical assistance, including oral transfers of technology required to be controlled by the international export control regimes, bodies and treaties for weapons of mass destruction and missiles and for conventional military goods exported to countries subject to arms embargoes of the above types. It is appropriate to define such common standards in a joint action,

HAS ADOPTED THIS JOINT ACTION: Article 1

For the purpose of this Joint Action:

- (a) "technical assistance" means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, training, transmission of working knowledge or skills or consulting services;
- (b) "technical assistance" includes oral forms of assistance;

**Comment:**

This provision completes Article 2(2) iii of the Regulation 428/2009 (intangible technology transfer) with the control of technical assistance through the **movement of persons** (see also comment on Article 7 of the Regulation 428/2009).

*“Assistance provided by electronic means”* is not included in the present definition. Such assistance is already covered by Article 2(2) iii of the Regulation 428/2009.

- (c) "international export control regimes, bodies and treaties" means the Australia Group, Missile Technology Control Regime, Nuclear Suppliers Group, Wassenaar Arrangement, Zangger Committee and the Chemical Weapons Convention.

**Comment:**

Information on international export control regimes can be found via their respective websites:

- Australia Group: <http://www.australiagroup.net/>;
- MTCR: <https://mtcr.info/> ;
- NSG: <http://www.nsg-online.org>;
- Wassenaar Arrangement: <http://www.wassenaar.org/>;
- Zangger Committee: <http://zanggercommittee.org/>.

***Article 2***

Technical assistance shall be subject to controls (prohibition or an authorisation requirement) adopted pursuant to Article 5 where it is provided outside the European Community by a natural or legal person established in the European Community and is intended, or the provider is aware that it is intended, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons.

**Table 20: Prohibition or authorisation requirement for technical assistance in connection with WMD or with conventional weapons in specific embargoed countries**

Member State	Prohibition or authorisation requirement for technical assistance in connection with WMD or with conventional weapons in specific (embargoed) countries
Austria	<b>Prohibition</b> in context of WMD, <b>authorisation</b> for military end-use.
Belgium	<b>Authorisation</b> requirement.
Belgium (Walloon Region)	<b>Prohibition</b> in context of WMD or UN embargoes (see Article 7 of the Walloon Government Decree of 6 February 2014 regulating export, transit and transfer of dual-use items and technology (Belgian Official Gazette of 19.02.2014).
Belgium (Flemish Region)	<b>Prohibition</b> in context of WMD, conventional weapons to specific/embargoed countries (Art. 12, 2 <sup>nd</sup> indent, 1 <sup>o</sup> of the Flemish Government of 14 March 2014), <b>prior authorisation</b> if technical assistance requires prior authorisation on the grounds of Regulation 428/2009 or if the Flemish Minister alleviates the prohibition into a prior authorisation (Art. 12, 3 <sup>rd</sup> and 4 <sup>th</sup> indent of the Flemish Government of 14 March 2014).
Bulgaria	<b>Authorisation</b> requirement. Provision of technical assistance for military end-use pursuant to Joint Action of the Council 2000/401/CFSP may be performed by natural and legal persons registered under the Commerce Act. For the purposes herein the provision of technical assistance shall be deemed as exports. Export authorisation shall be required in cases of provision of technical assistance outside the Community and when the technical assistance is related to movement of people and is intended, or the person providing it knows that it is intended, for: 1. development, manufacture, use, maintenance, storage, detection, identification or proliferation of chemical, biological or nuclear weapons or other nuclear explosive devices or for the development, manufacture, maintenance or storage of missiles capable of carrying such weapons; or 2. military end-use different from the one under item 1 in a State which is the object of arms embargo introduced with a common position or a common action adopted by the Council of the European Union or with a decision of the Organisation for Security and Cooperation in Europe, or of an arms embargo imposed by a binding resolution of the UN Security Council.
Croatia	<b>Authorisation</b> requirement.
Cyprus	<b>Prohibition</b> in context of WMD.
Czech Republic	<b>Authorisation</b> requirement. <b>Prohibition</b> as regards countries under embargo.
Denmark	<b>Prohibition but exception to this prohibition could be possible.</b>
Estonia	<b>Authorisation</b> requirement.
Finland	<b>Authorisation</b> requirement (notification mechanism based on provision contained in Article 4 of Regulation (EC) No. 1334/2000).

*Council Joint Action 2000/401/CFSP*

France	None.
Germany	<b>Authorisation and prohibition requirement (notification mechanism based on provision contained in Article 4 of Regulation (EC) No. 1334/2000).</b>
Greece	<b>Prohibition.</b>
Hungary	<b>Authorisation</b> requirement.
Italy	<b>Prohibition.</b>
Ireland	None. The position in that implementing legislation does not explicitly refer to technical assistance. However, consideration may be given to use of the catch-all clause / Article 4 if appropriate.
Latvia	Possibility to prohibit.
Lithuania	<b>Prohibition</b> under the basis of specific legislation on restrictive measures.
Luxembourg	<b>Authorisation</b> requirement.
Malta	<b>Authorisation</b> requirement.
Netherlands	<b>General Prohibition</b> of assistance on the development of a WMD program. In special cases an exception could be considered.
Poland	<b>Authorisation requirement. Prohibition</b> as regards countries under embargo.
Portugal	None.
Romania	<b>Authorisation</b> requirement for technical assistance in connection with WMD or with conventional weapons in specific embargoed countries. (Article 17 of the Government Ordinance no. 119/2010).
Slovakia	<b>Authorisation</b> requirement.
Slovenia	<b>Authorisation</b> requirement.
Spain	<b>Authorisation</b> requirement.
Sweden	<b>Prohibition</b> (except when assistance is provided as a part of international collaboration on research for countermeasures to WMD, or when an authorisation is provided in accordance with the Military Equipment Act).

### ***Article 3***

Member States shall consider the application of such controls also in cases where the technical assistance relates to military end-uses other than those referred to in Article 2 and is provided in countries of destination subject to an arms embargo decided by a common position or joint action adopted by the Council or a decision of the OSCE or an arms embargo imposed by a binding resolution of the Security Council of the United Nations.

**Comment:**

Articles 2 and 3 of the Joint Action organise the control of technical assistance through a mechanism similar to a “catch-all” clause. Like a catch-all clause, the scope of implementation of the Joint Action is not limited to a list of items, but potentially extended to all technical assistance, if it is related to items controlled by international export control regimes. Therefore, the scope of the Joint Action could not be assimilated to the one of the Regulation 428/2009. It is neither broader nor smaller, it is slightly different as long as it refers directly to international export control regimes and not to the items listed in Annex I (see article 1.c and 4.c of the Joint Action).

The Member States’ authorities shall submit technical assistance to export authorisation or prohibit the transfer when it is provided outside the EU **and** the exporter:

- Has been informed that such transfer is submitted to authorisation/prohibition through individual/general notification or by a publication in the national Official Journal;
- Is aware that it will contribute to the elaboration of weapons of mass destruction or will have a military end-use in a country subjected to an arms embargo.

This catch-all mechanism is usually implemented through the obligation for an exporter to notify such potential end-use to its licencing authorities (see comment on Article 4 of the Regulation 428/2009).

## Article 4

Article 2 does not apply to "technical assistance":

(a) where it is provided in a country listed in Part 3 of Annex II to Regulation (EC) No. 1334/2000;

**Comment:**

The Joint Action exempts the following destinations from ITT controls: Australia, Canada, United States of America, Japan, Norway, New Zealand and Switzerland (destinations covered by the EU GEA EU001).<sup>119</sup>

(b) where it takes the form of transferring information that is "in the public domain" or "basic scientific research" as these terms are respectively defined in the international export control regimes, bodies and treaties; or

**Comment:**

- **"In the public domain"** should be understood as information, which has been made available without restrictions upon its further dissemination (copyright restrictions do not remove information from being in the public domain).

- **"Basic scientific research"** means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles and phenomena or observable facts, not primarily directed towards a specific practical aim or objective.

The term **"basic scientific research"** does not seem to be equally understood by Member States (see comment on Article 2(2) of the Regulation 428/2009).

(c) where it is in oral form and not related to items required to be controlled by one or more of the international export control regimes, bodies and treaties.

**Comment:**

It shall be noted that, contrary to the Regulation 428/2009, the field of implementation of the Joint Action does not need to be formally updated as long as it refers directly to lists adopted by the six international control regimes listed in article 1(c). Consequently, technical assistance related to a certain item can be controlled or de-controlled by the EU Member States but not necessary the export of the items, since in function of the delay for amending Annex I of the Regulation.

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<sup>119</sup> Since the Commission's proposal for a Regulation of the European Parliament and the Council amending Council Regulation (EC) No 428/2009 by granting a Union General Export Authorisation for the export of certain dual-use items from the Union to the United Kingdom of Great Britain and Northern Ireland, published on the Council's website on 20 December 2018, the United Kingdom of Great Britain and Northern Ireland should be added in the list of beneficiaries of the EU General Export Authorisation 001, if the Regulation will be adopted.

***Article 5***

Each Member State which has not yet included in its national legislation or practices control provisions which implement this Joint Action or determined the sanctions to be taken shall bring forward appropriate proposals to:

- (a) implement this Joint Action through laying down control provisions;
- (b) determine the sanctions to be taken at national level.

**Table 21: Penalties applicable to infringements of the Joint Action imposed by Members States**

Member State	Joint Action 2000/401/CFSP (control of technical assistance) - Article 5(b)
Austria	<p>2011 Austrian Foreign Trade Act, (BGBl I 26/2011 as amended by BGBl I Nr.37/2013):</p> <ul style="list-style-type: none"> <li>- bypassing an authorization; giving incorrect or incomplete information to licensing authorities; omission of information; performing an operation after the revocation of the license; violation of a ban to export, import, transit, brokering between third countries, or giving them technical assistance or other transactions: imprisonment up to 3 years.</li> <li>- intentionally or negligently importing, exporting or transiting goods without required authorisation: fine up to 20.000 Euros.</li> <li>- contravening an obligation to information: imprisonment up to six weeks or a fine of up to 40.000 Euros.</li> </ul>
Belgium (Flemish Region)	<p><i>Law of 5 August 1991</i></p> <ul style="list-style-type: none"> <li>- import, export, transit, without a valid licence; supplying incorrect or incomplete information in view of obtaining a licence: fines from 10.000 to 1 million Euros and/or imprisonment up to 5 years.</li> </ul> <p><i>Loi générale sur les douanes du 11 septembre 1962 (Art. 10 and 10a, Belgian State Gazette, 27 October 1962) and General Customs and Excise Act of 18 July 1977 (Art.231, 249-253, 263-284)</i></p> <ul style="list-style-type: none"> <li>- Attempts to evade a declaration or declarations based on false or fraudulently obtained licences: imprisonment from 4 months to 1 year.</li> <li>- the goods concerned shall be confiscated and a fine of 10 times the evaded duties shall be imposed.</li> </ul> <p>It is debated whether or not this matter falls within the scope of the Belgian Act of 11 September 1962.</p>
Bulgaria	<p><b>Defence-Related Products and Dual-Use Items and Technologies Export Control Act, in State Gazette No. 26/29.03.2011:</b></p> <ul style="list-style-type: none"> <li>- engaging in export, import, transfer, brokering services, transportation and/or transit of defence-related products and of dual-use items without the respective licence, registration or authorisation:</li> </ul> <ol style="list-style-type: none"> <li>1. a fine from BGN 1 000 to BGN 50 000 (around 25.000 Euros) for natural persons as well as for officials of commercial companies in case the deed is not a crime;</li> </ol>

*Council Joint Action 2000/401/CFSP*

Member State	Joint Action 2000/401/CFSP (control of technical assistance) - Article 5(b)
	<p>2. a property sanction amounting from BGN 25 000 to BGN 250 000 (around 127.000 Euros) for legal persons and sole traders;</p> <p>3. a fine or a property sanction amounting from BGN 50 000 to BGN 500 000 (around 250.00 Euros) for a repeated violation.</p> <p>- engaging in activities in violation of the scope and terms of an issued authorisation or certificate, who do not conform with the export restrictions determined on receiving the defence-related products or the dual-use items as a result of transfer or import, or who fail or failing to produce documents, data, information and evidence, or who prevent or refuse access to an official exercising control under this Act:</p> <p>1. a fine from BGN 1 000 to BGN 50 000 for natural persons as well as for officials of commercial companies in case the deed is not a crime;</p> <p>2. a property sanction amounting from BGN 5 000 to BGN 50 000 for legal persons and sole traders;</p> <p>3. a fine or a property sanction amounting from BGN 10 000 to BGN 100 000 for a repeated violation.</p> <p>Criminal Code: imprisonment up to 6 years.</p>
Croatia	<p><b>Act on Control of Dual-Use Items (OG 80/11 and 68/2013)</b></p> <p>- Art. 22:</p> <p>(1) A fine in the amount from 50,000 to 500.000 HRK shall be imposed on any person or entity - a craftsman if:</p> <p>a) Provides technical assistance (Article 5, paragraph 1 and 2 of article 6 § 1 and 2 of the Act on Control of Dual-Use Items) without permission,</p> <p>b) does not inform the Ministry that of dual-use goods (Article 4, paragraph 4 of the Reg. 428/2009, Article 8 of the Act on Control of Dual-Use Items),</p> <p>c) fails to notify the Ministry of the change that occurred after the permit was issued (Article 19, paragraph 2 of the Act on Control of Dual-Use Items),</p> <p>(2) A fine in the amount from 50.000 to 100.000 HRK, shall be imposed for an offense referred to in paragraph 1 this Article, on the responsible person in the legal entity.</p> <p>(3) A fine in the amount of 5,000.00 to 10,000.00 shall be imposed under paragraph 1 of this article and on any other natural person.</p> <p>(4) For the offense referred to in paragraph 1 subparagraph 1 of this article, along with a fine may be imposed and barred from carrying out activities of exports of dual-use for at least six months up to one year.</p> <p>- Art. 23:</p> <p>(1) A fine in the amount of 50,000.00 to 100,000.00 shall be imposed on any person or entity - a craftsman if:</p> <p>b) acts contrary to the provisions of Article 18 the Act on Control of Dual-</p>

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Member State	Joint Action 2000/401/CFSP (control of technical assistance) - Article 5(b)
	<p>Use Items;                      c) fails to notify the Ministry, or no notice at the time, on the export of dual-use or services (Article 19, paragraph 1 of the Act on Control of Dual-Use Items).                      (2) A fine in the amount of 5,000.00 to 10,000.00 shall be imposed under paragraph 1 this Article, on the responsible person in the legal entity.                      (3) A fine in the amount of 1,000.00 to 5,000.00 shall be imposed under paragraph 1 this article and on any other natural person.</p> <p>-Art. 24: imprisonment for a period of six months to five years.</p>
Cyprus	<p>Ministerial Decree 355/2002 and Ministerial Decree 601/2004 (11.6.2004) on dual-use goods:</p> <p>Maximum imprisonment of three years and/or 100,000 Euros.</p>
Czech Republic	<p>Act No 21/1997 on Control of Exports and Imports of Goods and Technologies Subject to International Control Regimes, as amended by Act No 204/2002 art. 24 and 25:</p> <p>finest of up to 20 million CZK or five times the value of the goods, whichever is the higher,</p> <p>finest up to 20 million CZK (740.165,05 Euros) or 5 times the value of the goods, whichever of the two amounts is higher. and/or forfeiture of the controlled good.</p> <p><i>Criminal Code</i>                      Art. 124 a, 124b, 124c:                      Imprisonment from 3 to 8 years, or fine, or forfeiting of property, or ban of activity.</p> <p>Act 594/2004 implementing the EC Regime for the control of exports of dual-use items and technology.                      Violators could be punished for intent and negligence ().</p>
Denmark	<p>Same maximum penalties as these expected in application of the Dual-Use Regulation. Violators could be punished for intent and negligence.</p>
Estonia	<p>Fine or imprisonment of up to 5 years (Penal Code), up to 10 years if conducted by a group or by an official taking advantage of his or her official position (12 years for WMD related offences) and confiscation of goods. Administrative fines (Strategic Goods Act) if notification obligations are not complied with.</p>

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Member State	Joint Action 2000/401/CFSP (control of technical assistance) - Article 5(b)
Finland	<p>Criminal Code:</p> <p>Chapter 46 (on smuggling): unspecified fine and a maximum prison sentence of 2 years.</p> <p>If the crime is committed for an economic benefit or in a planned way and is serious, the minimum imprisonment is 4 years, up to a maximum of 5 years.</p> <p>Only fines for minor offences.</p>
France	<p>Fines of up to €18,000 (<i>Loi No 68-678 modifiée par loi 80-358 et ordonnance 2000-916</i>).</p> <p><b>Criminal offences:</b> prison sentences from 10 to 30 years and fines from €150,000 to €450,000 (<i>Code pénal, dispositions relatifs aux intérêts fondamentaux de la nation</i>).</p>
Germany	<p><b>For regulatory offences:</b> Administrative fine of up to €500,000 (Section 33 AWG in conjunction with Section 70 AWW).</p> <p><b>For criminal offences:</b> Prison sentence of up to 15 years (Art. 34 paras 2 and 6 AWG). Violators could be punished for intent and negligence (51<sup>st</sup> Regulation to change the Foreign Trade and Payments Regulation (AWA) of September 30 2000).</p>
Greece	<p><i>National Customs Code (law 2960/2001)</i></p> <p>Art. 157: Penalties applying for least and most serious smuggling infringements: violation committed repeatedly or involving three or more accomplices or fraudulent means is considered as more serious and it is punished with at least 1 year of imprisonment.</p> <p>An attempt to export or import unlawfully is punished with the same penalties as those applying for actual violations.</p> <p>The mere act of intending to export a dual-use good without a license most probably due to ignorance: not punished</p> <p>Customs officers may proceed to audits, confiscation of goods and preliminary investigations with the aim of verifying a case of non-compliance.</p> <p>Exporting or importing restricted goods without a license shall amount to smuggling and fines up to the value of the goods to be exported.</p> <p>Art. 155 par. 2, (b) and art.160 par. 1: export of controlled items without authorisation is assimilated to smuggling and provides for administrative penalties. In addition, as smuggling is a criminal offense, it may be punished with imprisonment, subject to court's judgement.</p>

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Member State	Joint Action 2000/401/CFSP (control of technical assistance) - Article 5(b)
	<p><i>Law 4072/2012</i></p> <p>Art. 36: administrative sanctions to be imposed by the Minister of Economy, Development and Tourism in case of violations of the provisions relating to external trade. Depending on the severity of the violation, the law provides for either temporary suspension of a firm's activities for up to one year or fine up to 100.000 Euros.</p>
Hungary	<p><i>Gov. Decree 13/2011 on foreign trade of dual-use items</i></p> <p>2 types of administrative sanctions if the crime committed is not serious or the perpetrator acted in good faith without criminal intent</p> <p>3 types of fines depending on the type of violation, its seriousness and the harm caused:</p> <ol style="list-style-type: none"> <li>1. fines ranging from 400-17.000 Euros for false data that might deceive the authority in the licensing procedure, for infringing obligations relating to provision of data keeping, notification, cooperation, declaration, registration, for threatening or infringing non-proliferation commitments or national security interests of Hungary</li> <li>2. fines between 1.700-17.000 Euros for breaches of specific conditions stipulated in licenses: for conducting foreign trade in dual-use items, including brokering activity or the provision of technical assistance, if not in accordance with the terms and conditions of the issued licenses</li> <li>3. fines up to 17.000-34.000 Euros for aggravated circumstances of the second category. It refers to cases when the breach in the terms and conditions of the issued licenses are so serious that it violates foreign and security policy interests of Hungary, as well as its international commitments.</li> </ol> <p>Other penalties (discretionary powers for the Authority): deprive the licensee of his rights or privileges, revocation of license, modification of global licenses i.e. less or items destinations or stricter terms and conditions.</p> <p><i>Decree 160 (2011)</i></p> <p>For the illicit export of military items:</p> <ol style="list-style-type: none"> <li>1. fines up to 17.000 Euros: contract making without a negotiation license and transportation of military goods without the proper authorization</li> <li>2. fines up to 33.000 Euros: economic operators carrying out brokering activities, foreign trade in military items, providing services without proper license, or violating the provisions of Council Regulation (EC) No 1236/2005 and false data able to deceive the Authority, or making false statements (for instance as regards foreign partners' reliability), transgressions of terms and conditions stipulated by the Authority in the licenses.</li> </ol> <p><i>Criminal Code</i></p> <p>Chapter XXXI "Criminal Offenses against Economic Sanctions imposed Under International Commitment for Reasons of Public Security"</p> <p>- Title "Criminal Offenses with Military Items and Services"</p>

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Member State	Joint Action 2000/401/CFSP (control of technical assistance) - Article 5(b)
	<p>Manufacture, marketing, use, possess, transfer, import and export, or transit of military items in an unauthorized way: felony punishable by imprisonment between 2 to 8 years.</p> <p>If the action committed in criminal association with accomplices or on a commercial scale: imprisonment between 5 to 10 years</p> <p>Engagement in preparations for criminal offenses with military items and services: imprisonment between 1 to 5 years.</p> <p>Title "<i>Criminal Offenses with Dual-Use Items</i>":</p> <p>Placing dual-use items or supplies military services without authorization, or exceeding the scope of the authorization, or using dual-use items in an unauthorized way: imprisonment between 1 to 5 years.</p> <p>Engagement in preparation for any criminal offense with dual-use items: imprisonment not exceeding 3 years.</p>
Ireland	<p><i>Control of Exports (Dual-Use Items) Order, SI n. 443/2009:</i></p> <ul style="list-style-type: none"> <li>- Administrative fines: depending on the case (fines up to 10.000 Euros)</li> <li>- depending on the case: prison 5 years maximum.</li> </ul> <p><i>Control of Exports Act, 2008:</i></p> <p>Any person who, for the purpose of obtaining a licence for himself or for any other person, makes any statement or representation which is, to his knowledge, false or misleading in any material respect: fine not exceeding 12.700 Euros or three times the value of the goods in respect of the which an export licence was sought, whichever is the greater, or, at the discretion of the court, to imprisonment for a term not exceeding 2 years or to both the fine and the imprisonment.</p>
Italy	<p><i>Legislative Decree 96/2003</i></p> <p>Art. 16: infringements listed in a decreasing order, from the toughest to the softest provision.</p> <p>6. technical assistance sanctioned according to the end-use of concerned dual-use goods and technology: in case of WMD end-use, the provider is sanctioned with administrative fines from 15.000 up to 150.000 Euros and imprisonment from 2 to 4 years; in case of military end-use or destination to an embargoed country, sanctions decrease with administrative fines from 10.000 up to 50.000 Euros and imprisonment up to 2 years.</p> <p>7. transmission via internet or via other electronic devices of listed items without license or with a license obtained with false documentations: administrative fines from 10.000 up to 50.000 Euros and imprisonment up to 2 years. There is also the seizure of the website containing the information</p> <p>The firm is obliged to pay the lease of the warehouse where the goods have been stored during the seizure.</p>

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Member State	Joint Action 2000/401/CFSP (control of technical assistance) - Article 5(b)
Latvia	<p><i>Latvian Code of Administrative Violations:</i>            - Art. 181 and 183: Fines of up to 700 Euros for natural person and up to 14.000 Euros for legal entity, with or without confiscation of goods.</p> <p><i>Latvian Criminal Law:</i>            - Art. 233: for the violation of regulations on the sale of strategic goods of a prison sentence for up to 4 years or a fine up to 80 minimum monthly salaries, and depriving of the right to engage in certain types of business for a time of up to 5 years.            The manufacture, acquisition, possession, carrying, transporting or selling of strategic goods without the appropriate permit is punishable by imprisonment of up to 10 years, and depriving of the right to engage in certain types of business for a time of 2 to 5 years.</p> <p>- art. 236: Careless possession, carrying, transport or shipping of strategic goods in violation of regulations, if by so doing an opportunity is given to another person to obtain such strategic goods, is punishable by a prison sentence of up to 2 years or jail, or a fine up to 50 minimum monthly salaries, and deprivation of the right to engage in certain types of business for a period of up to 3 years. In the case of a similar offence causing grave consequences is punishable by a prison sentence of up to 5 years or a fine of up to a 100 minimum monthly salaries, and deprivation of the right to engage in certain types of business for a period of up to 5 years.</p> <p>- Art. 237: violation of regulations or procedure for the use of strategic goods, if committed by a person permitted to acquire, possess or carry strategic goods and if such violation has caused grave consequences, shall be punishable by a prison sentence of up to 5 years or jail or forced labour or a fine of up to 100 minimum monthly salaries. Aggravating circumstance too.</p> <p><b>Criminal penalties:</b>            Imprisonment for lifetime or of up to 20 years for WMD (Criminal law, Section 73). Imprisonment of up to 12 years with or without deprivation of right to engage in entrepreneurial activity for a term of not less than 2 years and not exceeding 5 years for chemical and radiation items (Criminal Law, Section 190').            All other dual-use items – short term imprisonment or forced labour, or pecuniary penalty (Criminal Law, Section 237.1).</p>
Lithuania	No penalties foreseen in the present legislation of the implementation of the Joint Action 2000/401/CFSP.
Luxembourg	No penalties foreseen in the present legislation of the implementation of the Joint Action 2000/401/CFSP.
Malta	<i>Legal Notice 269 of 2001:</i> penalty of 50.000 Maltese Liri (116.468,46

*Council Joint Action 2000/401/CFSP*

Member State	Joint Action 2000/401/CFSP (control of technical assistance) - Article 5(b)
	Euros) or imprisonment up to 5 years.
Netherlands	<p><i>1950 Economic Offences Act</i>            Art. 6:            Warning or fine for unauthorized export: For misdemeanours, the maximum prison term is 1 year. In addition, a fine of category 4 (maximum 16.750 Euros), and community service can be imposed.            For felony offences, the maximum imprisonment is 6 years, and penalties can include community service and a category-5 fine (maximum 67.000 Euros).</p> <p><i>Strategic Services Act</i>            Art. 30            Infringements are punished by imprisonment of up to 1 year or fines of up to 19.000 Euros.</p> <p><i>General Customs Act</i>            Declarations submitted with a licence, but not in line with the conditions of the licence, are punished with a fine (maximum 7.600 euro) or imprisonment of up to 6 months.            Intentional cases are punished with imprisonment of up to 4 or 6 years and a fine of ranging from maximum 19.000 euro to maximum 76.000 euro (depending of the criminal offence).</p> <p><i>Criminal Code:</i>            If the violation is intentional, it is a crime. Conspiracy to violate export control laws and attempting to falsify an end-user document are punishable crimes.</p>
Poland	<p>Law of 29/11/2000 on international trade in goods, technologies and services of strategic relevance for state security and maintenance of international peace and security - Journal of Laws No. 119, Item 1250:</p> <p>Imprisonment of up to 10 years and fines up to 200,000 PLN.</p>
Portugal	No penalties foreseen in the present legislation of the implementation of the Joint Action 2000/401/CFSP.
Romania	<p><i>Governance Ordinance 119/2010</i>            Art. 34: Violation of the provisions of the Joint Action, unless the actions are considered crimes, shall constitute an offence and shall be sanctioned by a fine from 18,000 RON up to 25,000 RON (up to 5.541,10 Euros), as well as the suspension, revocation or withdraw of the granted licence.</p>

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Member State	Joint Action 2000/401/CFSP (control of technical assistance) - Article 5(b)
Slovakia	<p><i>Act 26/2002 Trading in Dual-use Goods) modified by Law no 39/2011</i>            Penalties for violation of export prohibitions and restrictions with regard to sensitive items: they vary depending on the gravity of offence. They may include a fine of up to 10.000.000 SKK (up to 331.939,18 Euros), or three times value of goods if the value exceeds 331.939,18 Euros, the forfeiture of controlled goods.</p> <p><i>Criminal Code:</i>            Imprisonment up to 8 years.</p>
Slovenia	<p><i>2001 Export Control of Dual-Use Goods Control</i>            - Art. 13            Legal persons, individual sole traders or individuals who perform the activities independently: fines from 1.200 to 125.000 Euros            Responsible person of the legal person who commits an offence: fines from 120 to 4.100 Euros            Private individual: fines from 120 to 1.200 Euros.</p> <p><i>Decree on the procedures for issuing authorisations and certificates and on competence of the Commission for the control of exports of dual-use items</i>            Art. 10a: <b>Lacking of reporting: fine from 100 to 10.000 Euros.</b></p>
Spain	<p><b>Anti smuggling Act:</b>            - fines depending on the value of the goods            and Imprisonment of up to 6 years.</p>
Sweden	<p>2000 Swedish Act on the Control of Dual-use Items and Technical Assistance (implementing Regulation (EC) 1334/2000, Svensk författningssamling (SFS) 2000:1064, as amended by the Act amending the Act on the Control of Dual-use Products and Technical Assistance of 13 November 2008, SFS 2008:887):</p> <p>- Section 18: intentional export of dual-use goods without permission, or transfer by electronic means of software or technology listed in the regulation: fine or imprisonment for up to 2 years, unless the crime is considered particularly grave, in which case the act provides for a prison term of between 6 months and 6 years            - The gravity of the crime is judged according to whether it was part of criminal activity carried out systematically or on a larger scale or whether it significantly affected the public interest.</p> <p><i>Criminal Code</i>            For serious offences: cap. 23: Attempt, Preparation, Conspiracy and Complicity are equal to complete crime.</p>

***Article 6***

This Joint Action shall enter into force on the day of its adoption.

***Article 7***

This Joint Action shall be published in the Official Journal.

Done at Luxembourg, 22 June 2000.

*For the Council*

*The President*

J. SÓCRATE

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