



EU Export control framework and on-going issues : a review process which never ends up

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Workshop on technical issues associated with the
implementation of EU Export control regime of dual-
use goods

What's new since the adoption of Regulation 428/2009 ?

**- European Commission's Green Paper on
The dual-use export control system of the
European Union: ensuring security and
competitiveness in a changing world**

Consultation procedure was closed on
October 31st, 2011

- Amendment of the Regulation 428/2009

New provisions, adopted by the Parliament
(September) and the Council (October), will
be published in December and shall enter
into force 90 days after the official publication

- Annual amendment of Annex I (and IV) of the Regulation 428/2009

Attempt to aggregate 2010 and 2011 annual Annex updating (adopted by the Council and shall be adopted by the Parliament)

1. European Commission's Green Paper

Paving the way of a **broader reform** of the dual-use trade control regime

Objective 2020 or further

Main elements raised by the Green Paper:

- Extending of the scope of authorisations
- Common risk assessment and reviews procedures;
- Intra-EU control;
- Catch-all controls;
- Transit and brokering controls;
- Information exchange.

- **Extending** of the scope of authorisations

Establishing new EU GA (intra company transfer), common understanding of NGA, phasing out NGA in favour of EU GA, establishment of EU Global Licence, reporting requirements (ex post or ex ante)...

- Common **risk assessment** and review procedures

Revision of article 12 (criteria), harmonizing procedures, adoption of EU sanctions, extension of the role of the EU Commission (information exchange), ...

- **Intra-EU control**

Reviewing or removing Annex IV, transforming an authorisation system into a notification system, registration of industries,...

- **Catch-all controls**

Establishing a common understanding, EU validity of national catch-all, enhanced role of intelligence and outreach to the industry,

....

- **Transit and brokering controls**

Territorial validity, common risk management process, brokers registration

- **Information exchanges**

Expanding the scope of information exchanges on major security threats, on

2. Amendment of Regulation 428/2009

- International mutual recognition of export control regime (article 25)
- EU General Export Authorisations (article 9 and Annex b to h)
- Enhancing information exchange (article 26)

Bilateral recognition of export control regime

Objective : eliminate authorisation requirements for re-exports within the territory of the EU

Essentially US re-export clauses

Might be similar to bilateral agreements signed by the EU with Canada, Japan, United States of America or Kazakhstan to facilitate the transfers of nuclear materials and to reinforce an efficient application of safeguards and export controls

EU General Export Authorisations

Five new EU GEA

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

EU GEA general conditions of use

1. Could not be used if the exporter 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 WMD or for a **military end-use**) or if he is **aware** that the items are intended for such use.

Similar to catch-all drafting even if it is not a catch-all clause

2. An exporter **could not 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.

3. Exporters have to 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 have to notify their National Authority **the first use** of the authorisation in a short delay after the first export took place or **alternatively prior to the first use**.

5. The use of an EU GEA could be submitted to exporter **registration prior** to the first use.
Registration shall be automatic and acknowledged by the competent authorities to the exporter.
6. Notification or registration requirements have to be **based on those defined for the use of national general export authorisation.**
7. The use of an EU GEA could be constraint by **other additional information** imposed by the **National Authorities**

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

Example of EU005 (telecommunication)

- Could not be used 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;

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

Enhancing information exchange

Comprehensive implementation and impact assessment report to be submitted **every three years** by the European Commission to the Council and the Parliament

Shall cover in particular : DUWG activities, encrypted system for information exchange, updating of lists and applicable penalties

By December 31st, 2013 the Commission shall publish a special report focusing on the implementation of **EU GEA 002** and it might include a legislative proposal to amend the Regulation, in particular as regards the issue of **low-value shipments**