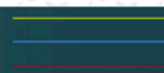




# **EU export/trade control framework and new ESARDA activities**

Pr. Dr. Quentin MICHEL

ESARDA, Luxembourg – May 22<sup>th</sup>, 2012



1. **Recent trade/export control developments** in the EU
2. **Lisbon Treaty(ies)** consequences on
  - Euratom Treaty
  - The definition of the EU nuclear policy
3. **ESARDA** Export control



# Recent trade control developments in the EU



# EU trade control instruments ?

EU **Legally binding specific** instruments related to trade control

- Council Regulation **428/2009**: Union regime for the control of exports, transfer, brokering and transit of dual-use items
- Council Regulations adopting **restrictive measures** (embargos) against countries or non-states actors:
  - Iran Regulation 267/2012 containing additional dual use control lists



# EU trade control instruments ?

## **EU Legally binding non specific**

instruments but related to trade control

- EU **Common Military List** - Council  
Common Position 2008/944/CFSP  
and updates
- Community **Custom Code** Reg.  
2913/92 and amendments  
(Security, 2005)
- **EURATOM** Treaty Art.59

# Council Regulation 428/2009: Essential elements

## **Controlling more than export :**

Brokering, transit and transfer between  
EU Member States

## **Controlling more than tangible transfers : technical assistance**

Intangible Technology Transfers (ITT)

**Controlling** materials, equipment and  
technology **listed** in Annex I

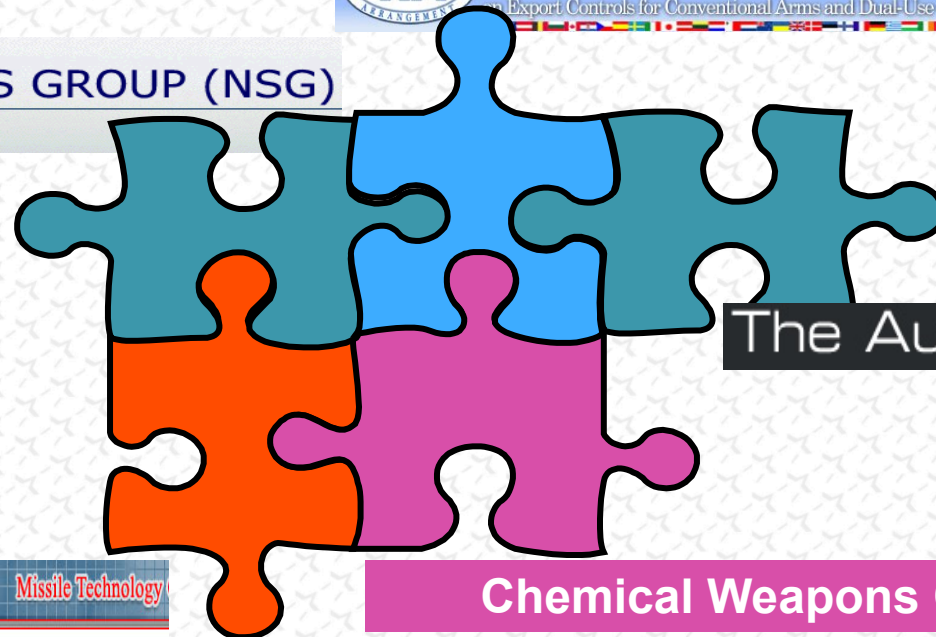
10 categories

# Council Regulation 428/2009: Essential elements

**Annex I is an compilation of export control lists adopted by the five international export control regimes**



NUCLEAR SUPPLIERS GROUP (NSG)



The Australia Group

MTCR

Missile Technology

Chemical Weapons Convention



## SYSTEMS, EQUIPMENT AND COMPONENTS

**0A001 Nuclear reactors and specially designed or prepared equipment and components therefor**

## TEST, INSPECTION AND PRODUCTION EQUIPMENT

OB001 Plants

**natural uranium**

Laser LIS, EMIS, diffusion, ...

OB002 Auxiliary

OB003 Plants

OB004 Plants

OB005 Plants

OB006 Plants

OB007 Plants for the **conversion** of plutonium

The Nuclear Suppliers Group  
has started a 3-year-long  
“fundamental review” of both  
*Trigger List* (> Category 0) and  
*Dual-use list*

Expected completion in 2013.



# Category 0 „Nuclear Materials, Facilities and Equipment“

## MATERIALS

- 0C001 “Natural uranium”, “depleted uranium”, thorium in the form of metal, alloy, chemical compound, or concentrate and any other material containing them
- 0C002 “Special fissile materials”
- 0C003 Deuterium, heavy water and other compounds of deuterium, and mixtures and solutions
- 0C004 Graphite, nuclear grade
- 0C005 Specially prepared compounds or powders for gaseous diffusion barriers

## SOFTWARE

- 0D001 “Software” specially designed or modified for the development, “production” or “use” of goods in this Category

## TECHNOLOGY

- 0E001 “Technology” according to Nuclear Technology Note for the development, “production” or “use” of goods specified in this Category

# Council Regulation 428/2009: Essential elements

## **Controlling more than listed items : catch-all clause**

- Items below specifications
- Items to be controlled only for certain end-users

## **Establishment of information exchange procedure and of no-undercut mechanism**

Avoiding licence shopping



# Council Regulation 428/2009: Essential elements

## **Authorisation granted by national administrations**

The declared end-use and end-user must be positively assessed by export administrations

**Six EU General Export Authorisations are available for selected items / countries**

# Council Regulation 428/2009: Essential elements

**intra-EU transfers require authorisations,  
despite the single market (Annex IV):**

- Nuclear items (Category 0)
- Some dual use items (stealth technology)
- Missile controls, lithium and tritium production, chemical precursors...)

# Council Regulation 428/2009: Recent news

- Annex I control list just amended (May 16) for the first time after 2009's recast  
→ need for a smoother process
- Regulation targeting Iran amended (267/2012)
- Regulation targeting Syria under discussion



## 2. Lisbon Treaty (December 2009)

Potential impacts may concern:

- Euratom Treaty
- EU external representation
- The definition of the EU nuclear policy

# Euratom Treaty: merging or marginalisation?

Adopted in 1958 and **regularly amended** to conform to the new provisions of the EC and EU treaties

- Chapters and articles regarding its institutions and decision making process have been modified
- Protocols have been added  
Including the one connected to article 40.3.3 of the Constitution of Ireland : *nothing ... shall affect the application in Ireland of Article 40.3.3 of the Constitution of Ireland.*



# Euratom Treaty: merging or marginalisation?

The core of the Treaty has never been **substantially reviewed**

Nuclear common market, safeguards, property and ownership, health and safety, promotion of research

Seems to be more and more **disregarded** by Member States if not informally rejected

Euratom Treaty is a satellite treaty and is no longer considered (informally) as equal to the TEU/TFUEU



# Euratom Treaty: merging or marginalisation?

**Proposals to revise the core provisions** have been regularly tabled but did not get required consensus

Germany, Ireland, Hungary, Austria, Sweden have attached a Declaration to the Lisbon Treaty stating that the Treaty needed to be brought up to date. They therefore supported the idea of a Conference of the Representatives of the Governments of the Member States, which had to be **convened as soon as possible**

# The slow dilution of the nuclear common market

**Nuclear common market** has been established by Chapter 9 of the Euratom Treaty to govern the free movement of certain nuclear items within Community

List A1 (nuclear material)

List A2 (material and equipment)

List B (material and equipment)

Entered rapidly into force



# The slow dilution of the nuclear common market

**Derogations** to the **Common market** initiated with the implementation of the NPT and the necessity of CSA

- **Dublin declaration 1984** : notification system for the movements of separated plutonium and uranium enriched to more than 20 % and of heavy water components



# The slow dilution of the nuclear common market

- Adoption of **the Regulation 3381/94** :  
Annex IV, V and article 21  
(authorisation for Dublin Declaration items)
- Adoption of the **Regulation 1334/2000** (recast by Regulation 428/2009 and amended by Regulation 1232/2011):  
Annex IV part II

# The slow dilution of the nuclear common market

Nuclear common market is presently **diluted in** the EU common market

Similar situation for other Treaty provisions?

- **Safeguards**, the endless question of potential IAEA duplication
- The role of the **Nuclear Supply Agency**
- Promotion of **Research**
- **External relations**



# The definition of the EU nuclear policy

- The Lisbon Treaty has enhanced the role of the European Parliament in particular by the general implementation of the **ordinary legislative procedure**
- European Parliament's nuclear policy does not necessary follow the same line that the one of the Council
  - Nuclear energy, nuclear disarmament, nuclear trade



# The definition of the EU nuclear policy

**Marginal effect** on the nuclear policies  
governed by Euratom

Research, investments, safeguards,  
property, safety are not submitted to  
the ordinary legislative procedure

Proposed by the Commission, decided  
by the Council after **consultation** with  
the European Parliament

**Indirect consequences** of policies  
governed by the CFSP or TFEU

# But substantial consequences for nuclear common commercial policy as long as it is ruled by **TFUE**

- Article 207 TFEU has been amended in order to submit the common commercial policy to the “ordinary legislative procedure”
- Co-decision between the Council of Ministers (as it was before) and the **European Parliament**

Get a consensus on the same text in maximum three rounds (readings)



# The nuclear common commercial policy

Consequences as regards the nuclear trade control regime

- Delays in annual revision of control lists

The 2009 version updating the Annex I of Regulation 428/2009 has been adopted only in May 2012

- Due to Parliament and Council internal decision making process



# The nuclear common commercial policy

Commission has proposed to introduce delegated acts in order to assure a quick update of control lists of Regulation (EC) No 428/2009

# The nuclear non proliferation policy ?

Most of the nuclear related policies are decided **unilaterally by Members States** and/or by the **Council** (CFSP)

Adoption of decisions supporting the NPT Review Conferences, strengthening the safeguards, requirement of the Additional Protocol as a condition of supply, 1540 Committee, IAEA (LEU) bank, fighting the nuclear weapon proliferation of certain States



# The nuclear non proliferation policy

The role of European Parliament, even after the Lisbon Treaty **remains limited**. Several resolutions have been adopted or rejected :



# The nuclear non proliferation policy

- European Parliament resolution of 2 February 2012 on **Iran** and its nuclear programme
- European Parliament resolution of 5 April 2011 on the efficiency and effectiveness of EU funding in the area of **decommissioning** nuclear power plants in the new Member States
- European Parliament resolution of 14 December 2010 on strengthening chemical, biological, radiological and nuclear security in the European Union – **an EU CBRN Action Plan**

# The nuclear non proliferation policy

Nevertheless these policies are still  
**implemented by Members States, the  
Commission and the Council (CCP)**

- Adoption of trade restrictions against certain States (Iran, North Korea, Syria,...)
- "Non-proliferation clause" to be included in agreements with third countries



# New ESARDA Export control WG



- **Forum** of different export control stake-holders: Nuclear regulators, technology suppliers, R&D, Universities, IAEA, European Commission, ad-hoc export control authorities
- **Identification** of export control related research topics



2<sup>nd</sup> EXP Sub-WG full meeting, January 24-25, 2012 - Ispra

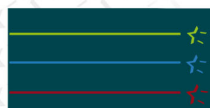
- Over 30 participants
- Topics: Additional Protocol, intra-EU transfers, information analysis, Internal Compliance Programmes, examples of controlled technology

Next meeting September 2012, Ispra: ITT

# Conclusion

- **The Lisbon Treaty** merging and marginalisation
- **Delegated Act** to the Commission
- **New ESARDA activities** on export control





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