"Exporting Nuclear Materials Items and Technology from Belgium: An Impossible Challenge?"

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Fifteen years after ....

- U.S.–India Civil Nuclear Agreement
- Iran sanctions and their recent lifting
- Russian embargo...
New business opportunities?

◆ Indo-US nuclear deal

◆ Iran sanctions and their progressive lifting

◆ New peaceful nuclear programmes (UEA, Kenya, Pakistan..)
Iran

**Joint Comprehensive Plan of Action (JCPOA)**

- Iran and the major powers "endorse" the plan, known as the Joint Comprehensive Plan of Action (JCPOA).
- Iran and the IAEA will start developing arrangements to implement all transparency measures so that they are ready for Implementation Day.

**Adoption Day**

- JCPOA participants will begin making necessary arrangements and preparations for the implementation of commitments.
- The EU will adopt a regulation lifting nuclear-related sanctions with effect from Implementation Day "simultaneously" with IAEA verification of agreed nuclear-related measures by Iran.

**Implementation Day**

- Occurs when IAEA verifies Iran has complied with nuclear-related measures.
- The EU suspends or terminates nuclear-related sanctions specified in Annex II of the JCPOA.
- The UN terminates sanctions.

**Transition Day**

- Takes place eight years from Adoption Day, or earlier upon a report from the IAEA director-general stating the IAEA has reached a conclusion that all nuclear material in Iran remains for peaceful activities.
- The EU terminates any remaining sanctions.

**Termination Day**

- Takes place 10 years from Adoption Day provided no UN sanctions have been reinstated.
- The UN will pass resolution approving termination of JCPOA.
- The UN Security Council "would no longer be seized of the Iran nuclear issue", or close the file.

A **Joint Commission** is established to follow the development and implementation of the JCPOA and to register any violations. The Joint Commission also reviews and decides on proposals for nuclear related transfers to or activities with Iran.
Nuclear trade principles: EU competence

- Not anymore Euratom even of article 59

- Nuclear trade control: a part of WMD trade control system(s)

- Essentially Regulation 428/2009
New constraints?

- 9/11 the fight against nuclear terrorism (NSG)
- Russian, North Korean embargo(s)… and nuclear items
- UNSCR 1540 from export control to trade management
- UNSCR 1887 adoption of international conditions of supply
Extension of operators responsibilities?

- In terms of transactions: transit, brokering, ship carrying, financing
- In terms of operations: intangible
- In terms of items: lists updating and catch-all (more)

Maybe easier to understand via ....
The gaz station syndrome

1930
The gaz station syndrome

1960
The gaz station syndrome

1970
The gaz station syndrome
A example of extension of operator liability

- “Has been informed”
- “Knows”
- “Is aware”

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, 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.
Extension of operator liability and potential extension of scope

New potential end use to be controlled: Human security

“... the items in question are or may be intended, in their entirety or in part, for use in connection with a violation of human rights, democratic principles or freedom of speech as defined in 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, such as via monitoring centres or lawful interception gateways”

However new trade facilitations has been adopted

- **EU001** covers most Annex I exports. Exports to **8 destinations** (AU, CA, JP, NZ, NO, CH, LI, US);

- **EU002** export of certain dual-use items to **6 destinations** (AR, HR, IS, ZA, KR, TR);

- **EU003** Export **after Repair / Replacement**. It authorises exports to 24 destinations (AL, AR, BA, BR, CL, CN (including HK and MO), HR, MK, TOM, IS, IN, KZ, MX, ME, MA, RU, RS, SG, ZA, KR, TN, TR, UA, AE);

- **EU004** Temporary Export for Exhibition or Fair. It authorises exports to 24 destinations (AL, AR, HR, BA, BR, CL, CN (including HK and MO), MK, TOM, IC, IN, KZ, MX, ME, MA, RU, RS, SG, ZA, KR, TN, TR, UA, AE).

- **EU005** Telecommunications - Annex IIe - Covers some category 5 part 1 items (for a specific list of covered items please refer to the legislation). It authorises exports to 9 destinations (AR, CN (including HK and MO), HR, IN, RU, ZA, KR, TR, and UA)

- **EU006** chemicals - Covers several items in category 1C350, 1C450.a. and 1C450.b. It authorises exports to 6 destinations (AR, HR, IC, KR, TR, and UA)
Regulation under review

But none for category 0 (nuclear items)

And most of nuclear materials, equipment and technology are included in Annex IV

Regulation under review
Before 2004

- **One** licensing authority to apply for an export licence
- **One** committee to assess CANPAN/CANVEK to grant the authorisation
- **One** custom authority
After 2004

- **Three** regional licensing authority plus one federal to apply for a licence
- **One** committee (CANPAN/CANVEK) to assess, grant or deny the authorisation
- **Three** regional authority to assess grant or deny the authorisation
- **One** custom authority
Before 2004

- EU: Regulation 1334/2000 ruling the exports of dual use items
  - Nuclear items: Annex I category 0 and 1

- Belgium Nuclear Trade Law of February 9 1980 and Ministerial Decrees
  Establishing CANPAN/CANVEK and export control principles of nuclear items and a list of items to control
After 2004: Nuclear trade regionalization: an intended consequence...

Regionalization organized by the Special Law on Constitutional Reform.

Article 6§4 VI Special law is referring to:
- produits et des technologies à double usage
- producten en technologieën voor tweeërlei gebruik

... as defined by Annex I of EU Regulation, therefore nuclear trade is included
Statement during the debate at the Parliament by the Federal Minister in charge that “nuclear items” are included....

Political statement in contradiction with the Law ...

so let’s compromise
Informal adoption of *gentlemen agreement* between Federal and Regions

1. Regional authorities will voluntarily submit nuclear export application to CANPAN/CANVEK
2. Federal Authorities will invite Regions to participate to CANPAN meetings (with right to vote)
Why keep things simple when complexity is possible?

Constitutional Court Judgment of November 2011 (168/2011)
- Acknowledging for a parallel competence of Federal and Regions
- Involve a double authorisation procedure
  Who is the first, who takes over the decision?
- List of items not necessarily identical
  - Regulation 428/2009 (Annex I) for Regions
Gouvernement Agreement of December 2011

Comittement to:
Les Régions et le niveau fédéral s’engagent dans un accord de coopération à faciliter la coopération pour ce qui est de la politique en matière d’exportation de matières nucléaires. L’accord de coopération se fondera sur les dispositions légales et institutionnelles en vigueur et sera axé sur les échanges d’information, le partage d’expertise et le moyen de rendre efficaces les procédures prévues.
However in Dutch:

De Gewesten en het federale niveau verbinden er zich via een samenwerkingsakkoord toe om de samenwerking rond het nuclear exportbeleid te vergemakkelijken. Het samenwerkingsakkoord zal voortbouwen op de huidige geldende wettelijke en institutionele bepalingen en zich richten op informatie-uitwisseling, expertise-uitwisseling en het doeltreffend maken van de voorziene procedures.
- Cooperation Agreement was not signed under the previous federal government.

- No similar commitment taken by the new Federal Government.
Conclusion: Impact on Belgian nuclear trade?

- Number of licences issued didn’t decrease
- Number of denials didn’t increase
- No significant development of new nuclear activities