

Faculty of Law



Political Science
Department



EU trade controls and nuclear non-proliferation responsibility: Education and Trainings

Pr. Dr. Quentin MICHEL

ESARDA, Budapest, 16-19 May, 2011



Are education and trainings covered by the NSG ?

General definition :

Education and trainings are activities provided **within** the supplier State or a **third State** that concern **technology** related to dual-use and trigger list items and could include the supply of **equipment**

- The term *education* is not used by the NSG Guidelines neither by other international export control regimes
- The term *training* is included in the definition of *technical assistance*

NSG Guidelines (INFCIRC 254 Part I and II) : "*Technical assistance*" may take forms such as: *instruction, skills, training, working knowledge, consulting services.*

Are education and trainings covered by EU Export Control Regimes established by the Regulation 428/2009 ?

As for the NSG, the term *education* is not used and the term *training* is included into the definition of *technical assistance*

Technology..... This information takes the form of 'technical data' or 'technical assistance'.

*N.B.: 1: 'Technical assistance' may take forms such as instructions, skills, **training**, working knowledge and consulting services and may involve the transfer of 'technical data'.*

Could education and trainings be considered as an export submitted to authorisation provided by the EU Regulation 428/2009 ?

Considering that education and trainings are mostly related to **intangible transfers of technology**, it might be included in the definition of *export* :

*(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.;*

Nevertheless, considering intangible transfers only certain forms seem to be covered

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*

Consequently as regards the Regulation 428/2009 and considering the two definitions :

1. Member States shall require an authorisation if education and trainings involve the **supply of listed or non-listed** (in case of catch-all implementation) items

An authorisation is required for the export of items and not for trainings or education activities

2. If education and trainings are delivered **only in oral form** and are to be provided **within the third State**, Member States shall not require an authorisation

Such operations might still be considered as export and are therefore submitted to the Joint Action 401/2001/CFSP

Joint Action 2000/401/CFSP organises the control of technical assistance through a mechanism similar to a catch-all clause

- CFSP politically binding instrument to be implemented individually by Member States

- As for the Regulation the terms *education* and *training* are partly included in

"technical assistance" means ..., 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;

Member States shall require an export authorisation or shall 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 might contribute to the elaboration of weapons of mass destruction or might have a military end-use in a country under an arms embargo.

- The scope of implementation is not limited to a list of items; it might be extended to all technical assistance related to items controlled by international export control regimes

Catch-all clause provision

- Not applicable to transfers to certain States, nor to information “in the public domain” or to “basic scientific research”

Australia, Canada, USA, Japan, Norway, New Zealand and Switzerland

3. If education and trainings are delivered **only** in **oral form** and are to be provided **within the supplier State**, they will not be considered as *export*

- Such operations are not covered by the Regulation nor by the Joint Action
- Might be submitted to authorisation by Member State on a national basis

To conclude

The control of education and trainings are **partly covered** by the EU export control regime

Nevertheless, the responsibility of trainers and education authorities **could be engaged** in case of (un)intentional breach of national or EU legislation

An appropriate answer might be the development of **outreach activities** linked with an obligation for industrial operators to establish an **Internal Compliance Program**