

# Winston Pocket Guide to EU Export Control and Regulation

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On 30 January 2025, the European Commission published its first annual report on the implementation of EU export controls and the modernised Dual-Use Regulation ((EU) 2021/821) (the “Dual-Use Regulation”). The report marks an important milestone in the development of EU export control policy, providing a consolidated overview of the data for 2022 with a view to enhancing transparency in this area.

Authorised dual-use trade was estimated to exceed EUR 57.3 billion in 2022, representing 2% of the total extra-EU exports of goods. Notably, however, the report highlights an increasing number of export authorisation requests being denied for dual-use items in 2022 when compared to figures for 2021. The report’s findings demonstrate an increasing level of scrutiny on the export of dual-use items, both, at EU level and within individual Member States. Given the potentially serious consequences for non-compliance with the EU export control regime (including monetary penalties, criminal sanctions, and broader reputational damage), it is more important than ever for export businesses operating within the EU to familiarise themselves with the applicable regulations and put in place appropriate safeguards to ensure compliance.

Against this background, we summarise below the key features of the EU’s export control regime:

## OVERVIEW

Export controls are an important mechanism used in the EU (and across the globe) to restrict international trade in controlled items, with the aim of preventing the proliferation of military-grade weapons and promoting the core principles of international humanitarian law.

In broad overview, EU export controls consist of restrictions imposed at EU level and those imposed nationally by individual Member States. Such restrictions generally implement the terms of international conventions to which the EU and/or its Member States have acceded - for example, the Chemical Weapons Convention, the Wassenaar Arrangement, and the Missile Technology Control Regime. In practice, however, there may be some variation in how export controls are applied as there is no central EU enforcement agency. Instead, export controls are generally enforced by competent authorities in relevant Member States.

The EU export control regime regulates the export of dual-use items (i.e., goods which are capable of being used for military purposes and commercial or civilian purposes), as well as military items. In practice, businesses involved in

the trade of commercial or consumer goods which are not specifically for military use, but could be modified for such purposes, tend to be most at risk of inadvertently falling foul of the rules.

## EXPORT OF DUAL-USE ITEMS

EU exports of dual-use items are governed by the Dual-Use Regulation, which has been in force since 9 September 2021.

The term “*exports*” is construed broadly under the Dual-Use Regulation, such that transfers of certain intangible items (including software or technology) are captured by the regulation in addition to transfers of physical items. A transfer may amount to an “*export*” even if no transaction, transfer of funds, or transfer of ownership has taken place and may include, for example, intra-group transfers. In certain scenarios, other activities may also be subject to the restrictions imposed by the Dual-Use Regulation, such as brokering the sale or supply of items and providing technical assistance related to certain dual-use items.

The categories of dual-use items to which export controls apply are specified under Annexes I and IV of the Dual-Use Regulation. In broad terms, these include various dual-use goods, software and technology which are “*designed or [may be] modified for military use*” (such as sensors, lasers, computers, and electronics), as well as other highly sensitive items (such as cryptanalytic items, stealth-related technology and items relating to nuclear or chemical warfare). The analysis required to determine whether an item falls within scope of Annexes I and/or IV of the Dual-Use Regulation is complex and requires a detailed assessment by reference to the specific provisions of the Dual-Use Regulation and the technical specifications of the items in question.

If export controls apply under the Dual-Use Regulation, it is important to determine which authorisations must be obtained from the competent authority in the relevant Member State before any transfer from within to outside the EU can take place. Enhanced restrictions apply to the transfer of the highly sensitive dual-use items listed under Annex IV of the Dual-Use Regulation, requiring authorisations to be obtained in relation to transfers of such items between Member States (in addition to transfers outside the EU). Export businesses are, in any event, required to adhere to documentary and record-keeping requirements in respect of transfers of dual-use items within the EU.

Even if the items themselves are not listed in Annexes I and/or IV of the Dual-Use Regulation, an export authorisation will still be required if the exporter has been informed by the competent authority that the items are or may be intended for a controlled end use (for instance, if the competent authority has identified a potential use connected with weapons of mass destruction, military use by a purchaser or destination which is subject to an arms embargo, etc.). If exporters are aware, or have grounds to suspect, that the items in question are or may be intended for a controlled end use, additional reporting obligations will also arise under the Dual-Use Regulation.

The Dual-Use Regulation applies throughout the EU, but individual Member States may also impose further restrictions on the export of other dual-use items under national law. Consequently, it is important for export businesses to seek appropriate local law advice in each Member State where they operate.

## EXPORT OF MILITARY ITEMS

While the EU maintains a common list of military items, listing a range of items which are either “*specially designed or modified*” for military use (including, for example, weapons, firearms, ammunition and software, technology or other equipment which can be utilised for a military purpose), it is not legally binding and EU exports of military items are generally governed by the national laws of individual Member States. For this reason, businesses should ensure they are familiar with the applicable rules in the Member States where they operate and seek appropriate local law advice where required.

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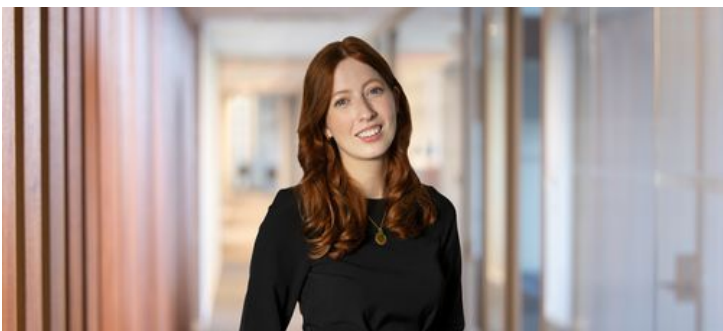
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