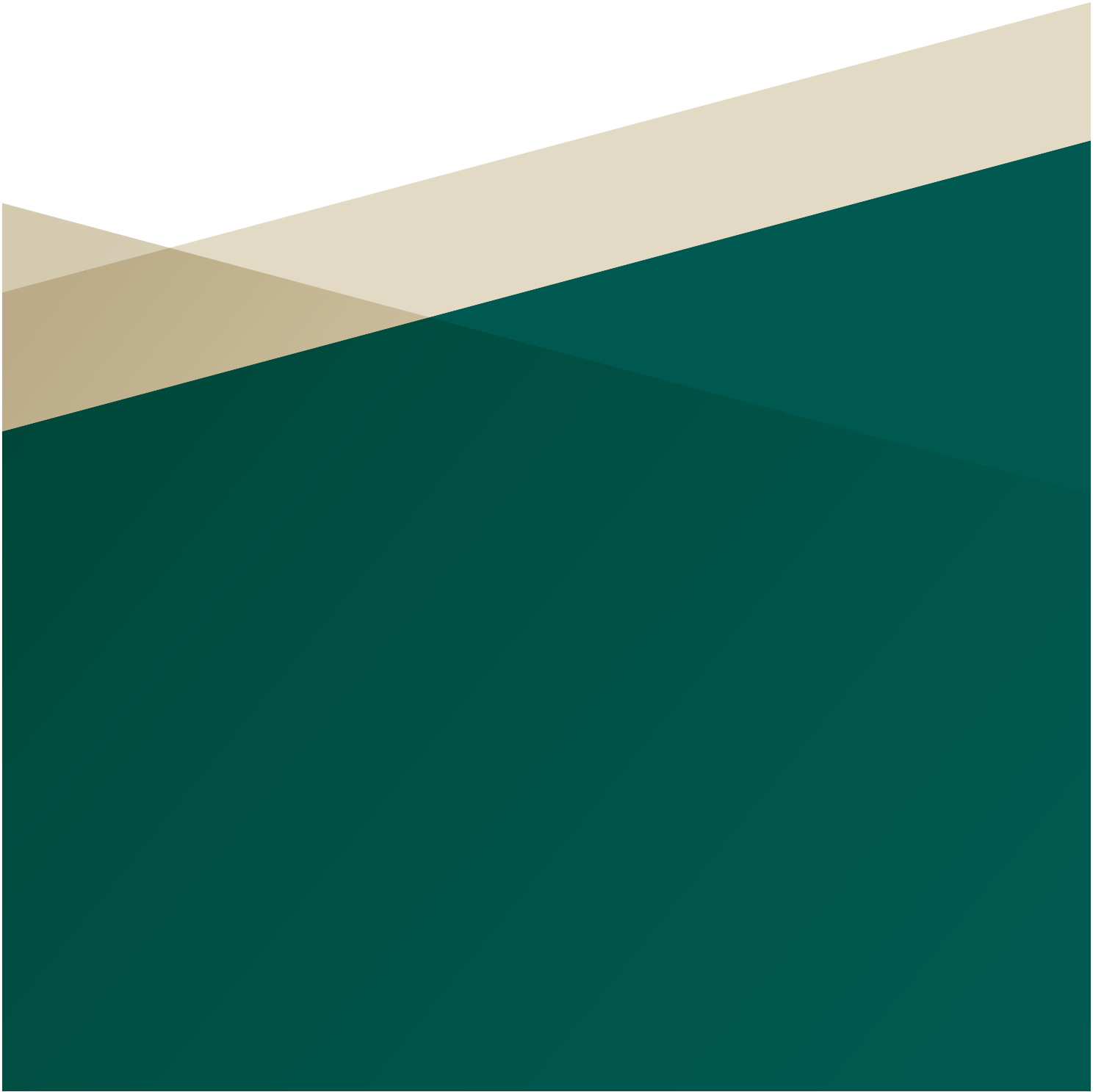




Rialtas na hÉireann
Government of Ireland

Export Licensing and Control Information for Exporters

Prepared by the Department of Business
Enterprise and Innovation
www.dbei.gov.ie



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Introduction

The European Union operates a system of controls on the export of sensitive items from the member states. These controls form part of a global framework designed to prevent the proliferation of weapons of mass destruction, to preserve regional stability and to protect human rights. The Department of Business, Enterprise and Innovation is the national competent authority with responsibility for administering and enforcing these controls in Ireland.

A breach of controls would constitute a serious offence and could result in the guilty party being liable to a fine or imprisonment. In addition, the reputational damage incurred by the exporter and Ireland as a result of a breach would be substantial.

The Department of Business, Enterprise and Innovation has prepared this introductory guide to assist exporters in understanding export controls and their obligations under relevant EU and national legislation.

The legal obligation to comply with export controls rests with the exporter.

Disclaimer

This guide is provided for information purposes only. It is not a legal interpretation of the full framework of export controls, nor the underpinning national and EU legislation, and should not be construed as legal advice.

Exporters should consult relevant EU and national legislation and obtain professional legal advice if they are unsure of their legal obligations.

While every effort has been made to ensure that the information in this booklet is accurate at the time of going to press, the Department assumes no responsibility for inaccuracies that may arise due to subsequent changes to EU legislation or EU sanctions regimes.

1. Export Control



Why are some exports controlled?

EU export controls seek to balance the pursuit of free trade and the functioning of open markets with maintaining international stability and security. Export controls are part of an international framework designed to:

- Prevent the proliferation of weapons of mass destruction.
- Support global security.
- Protect human rights.
- Prevent terrorism.
- Support regional stability.

Export controls include licensing requirements for certain sensitive goods or export restrictions (sanctions) in respect of certain destination countries or end-users.

Which exports are controlled?

Exports subject to controls include:

- Dual-use items (products and components, including software and technology, that can be used for both civil and military purposes),
- Military equipment,
- Firearms for personal, civilian use (e.g. for hunting or sport),
- Goods which may be used for capital punishment, torture, or other cruel, inhuman and degrading treatment or punishment,
- Exports to countries subject to EU trade sanctions.

Most dual-use items can move freely within the EU. However, a licence is required to export them to a third country (i.e. outside the EU). Very sensitive items, such as nuclear materials, require a transfer licence for movement within the EU.

A licence is required for transfers of military equipment within the EU, as well as for export to a third country (i.e. outside the EU).

There are corresponding controls in place for *brokering* of these goods and for providing *technical assistance* related to these goods.

Note:

Export controls may apply not only to physical goods, but also to software, information and other services.

Note:

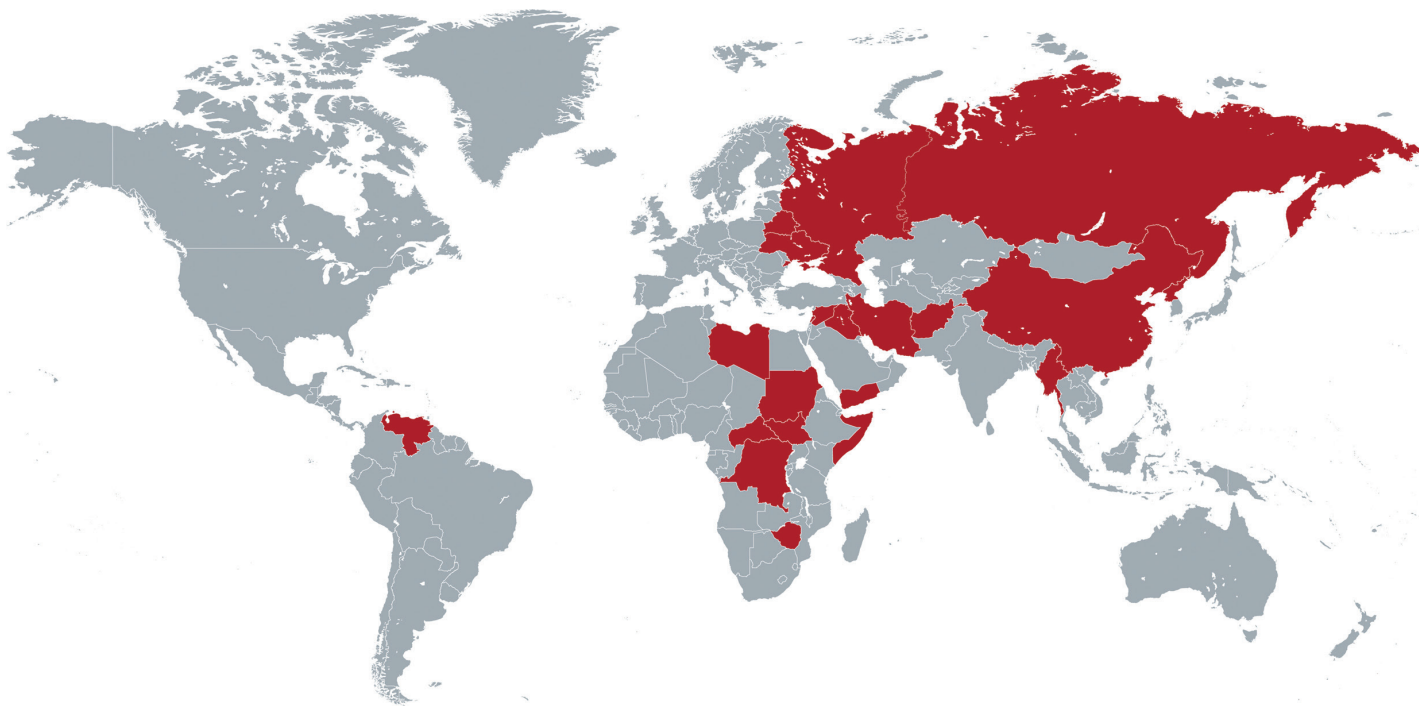
The method of transport outside Ireland doesn't determine whether an export has taken place or is subject to controls. An export can be made in many ways, including a physical shipment, normal post, delivery by hand, download or email.

What are trade sanctions?

EU sanctions, formally known as EU *restrictive measures*, are instruments used by the EU to bring about a change in the policies or activities of other countries. They can be used to tackle violations of international law or human rights, and to promote peace, democracy and the rule of law. EU sanctions are often introduced to implement a resolution of the United Nations Security Council.

Sanctions will generally include trade measures such as restrictions or embargoes on exports of certain items to specific countries or end-users. For example, the export of military equipment or equipment that could be used for internal repression, may be prohibited. Currently, there are over 30 EU sanctions regimes in effect. Countries subject to sanctions regimes are shown in red on the map overleaf.

Up to date information on EU sanctions can be found on www.sanctionsmap.eu. This is an interactive EU sanctions map which shows all countries which are currently subject to EU sanctions and provides information on the individual regimes.



What is the role of the Department of Business, Enterprise and Innovation?

The Department of Business, Enterprise and Innovation is responsible for ensuring that Ireland plays its part as a responsible member of the global community, in preventing the proliferation of weapons of mass destruction, for supporting regional stability, and for protecting human rights. Formally, the Department is the national competent authority in Ireland for EU and national controls on::

- Exports of dual-use items (products and components, including software and technology, which can be used for both civil and military purposes),
- Exports of military equipment,
- Exports of firearms for personal, civilian use (e.g. for hunting, sports) to non-EU countries,
- Exports of goods which could be used for capital punishment, torture, or other cruel, inhuman and degrading treatment or punishment,
- Exports to countries subject to EU trade sanctions.

The Department is responsible for administering the export licensing system set out in the relevant European and Irish legislation. The Department assesses applications for export licences submitted by exporters against criteria specified in the legislation, and on this basis, decides whether to grant or deny licences.

The Department is also responsible for enforcing the controls, including investigating suspected breaches and taking prosecutions.

The Department endeavours to operate the licensing system in as efficient a manner as possible to minimise the burden on exporters and to facilitate legitimate trade. However, it must also ensure the integrity of Ireland's export control regime. It is important that Ireland's regime is recognised internationally for its rigour and high level of compliance.

Note:

The Department of Justice and Equality is responsible for transfers of firearms within the EU.

What are 'dual-use' items?

Dual-use items are products and components, including software and technology, which can be used for both civil and military purposes. The definitive list of dual-use items is set out in EU legislation, namely, Annex I of Council Regulation (EC) 428/2009.

The list of dual-use items is updated annually by the European Commission, based on the work of technical experts in a number of multilateral non-proliferation regimes, to take account of advances in technology and geo-political developments.

The range of controlled items is very broad and spans 10 categories:

- **Category 0** Nuclear materials, facilities and equipment
- **Category 1** Special materials and related equipment
- **Category 2** Materials processing
- **Category 3** Electronics
- **Category 4** Computers
- **Category 5** Telecommunications and "information security"
- **Category 6** Sensors and lasers
- **Category 7** Navigation and avionics
- **Category 8** Marine
- **Category 9** Aerospace and propulsion

Many ICT products, both hardware and software (e.g. data storage, networking, cybersecurity), are classified as dual-use items by virtue of the fact that they incorporate strong encryption for security purposes. Products for aerospace applications (e.g. drones, planes, rockets) can also be controlled when there is a risk of diversion to weapon delivery systems.

For many items their control status is determined by their performance characteristics. Low-specification items may not be controlled while higher specification variants or very specialised models are controlled.

Note:

The performance characteristics of a good may determine its control status – it is important to check Annex I of the Dual-Use Regulation for specifications.

What military equipment is controlled?

The EU maintains a list of military equipment, known as the EU Common Military List. A licence is required for transfers of all equipment on this list within the EU, as well as for exports to a third country (i.e. outside the EU). However, in some instances, exporters can avail of simplified procedures in respect of transfers within the EU.

The EU Common Military List consists of 22 categories of equipment:

- ML1** Smooth bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12.7 mm (calibre 0.50 inches) or less and accessories, and specially designed components therefor.

- ML2** Smooth-bore weapons with a calibre of 20 mm or more, other weapons or armament with a calibre greater than 12.7 mm (calibre 0.50 inches), projectors and accessories, and specially designed components therefor.

- ML3** Ammunition and fuse setting devices, and specially designed components therefor.

- ML4** Bombs, torpedoes, rockets, missiles, other explosive devices and charges and related equipment and accessories, and specially designed components therefor.

- ML5** Fire control, and related alerting and warning equipment, and related systems, test and alignment and countermeasure equipment, specially designed for military use, and specially designed components and accessories therefor.

- ML6** Ground vehicles and components.

- ML7** Chemical or biological toxic agents, "riot control agents", radioactive materials, related equipment, components and materials.

- ML8** "Energetic materials" and related substances.

- ML9** Vessels of war (surface or underwater), special naval equipment, accessories, components and other surface vessels.

- ML10** “Aircraft”, “lighter-than-air vehicles”, unmanned aerial vehicles, aero-engines and “aircraft” equipment, related equipment and components, specially designed or modified for military use.
-
- ML11** Electronic equipment, not specified elsewhere on the EU Common Military List, and specially designed components therefor.
-
- ML12** High velocity kinetic energy weapon systems and related equipment, and specially designed components therefor.
-
- ML13** Armoured or protective equipment, constructions and components.
-
- ML14** ‘Specialised equipment for military training’ or for simulating military scenarios, simulators specially designed for training in the use of any firearm or weapon specified by ML1 or ML2, and specially designed components and accessories therefor.
-
- ML15** Imaging or countermeasure equipment, specially designed for military use, and specially designed components and accessories therefor.
-
- ML16** Forgings, castings and other unfinished products specially designed for items specified by ML1 to ML4, ML6, ML9, ML10, ML12 or ML19.
-
- ML17** Miscellaneous equipment, materials and ‘libraries’, and specially designed components therefor.
-
- ML18** Production equipment and components.
-
- ML19** Directed energy weapon systems (DEW), related or countermeasure equipment and test models, and specially designed components therefor.
-
- ML20** Cryogenic and “superconductive” equipment, and specially designed components and accessories therefor.
-
- ML21** “Software.”
-
- ML22** “Technology.”
-

What are ‘technology’ and ‘technical assistance’?

Export controls may apply to information as well as physical goods. Transfers of information, or technology, related to controlled items are themselves controlled. The provision of *technical assistance* relating to a controlled item may also be subject to control..

Similar but distinct legal definitions of the terms ‘*technology*’ and ‘*technical assistance*’ apply depending on whether the context is dual-use items, military equipment or sanctions.

For dual-use items the legal definitions are set out in the Dual-Use Regulation:

“*Technology*” means specific information necessary for the “development”, “production” or “use” of goods. This information takes the form of ‘technical data’ or ‘technical assistance’.

‘*Technical assistance*’ may take forms such as instructions, skills, training, working knowledge and consulting services and may involve the transfer of ‘technical data’.

‘*Technical data*’ may take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories

For military equipment, the definitions are set out in the EU Common Military List:

“*Technology*” [means] Specific information necessary for the “development”, “production” or operation, installation, maintenance (checking), repair, overhaul or refurbishing of a product. The information takes the form of ‘technical data’ or ‘technical assistance’. Specified “*technology*” for the EU Common Military List is defined in ML22.

Technical Notes

1. ‘*Technical data*’ may take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.
2. ‘*Technical assistance*’ may take forms such as instruction, skills, training, working knowledge, consulting services. ‘*Technical assistance*’ may involve transfer of ‘technical data’.

For EU sanctions, exporters should check the precise definition pertaining to each regime (country). However, the following definition usually applies:

'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services; technical assistance includes verbal forms of assistance;

What is 'brokering'?

Export controls apply to individuals or companies engaged in brokering of controlled items. Similar but distinct legal definitions of 'brokering' apply depending on whether the context is dual-use items, military equipment or sanctions.

For dual-use items the legal definition is set out in the Dual-Use Regulation:

'brokering services' shall mean:

- the negotiation or arrangement of transactions for the purchase, sale or supply of dual-use items from a third country to any other third country, or
- the selling or buying of dual-use items that are located in third countries for their transfer to another third country.

For military equipment, the definitions are set out in the EU Common Military List:

Brokering activities are activities of persons and entities:

- negotiating or arranging transactions that may involve the transfer of items on the EU Common List of military equipment from a third country to any other third country; or
- who buy, sell or arrange the transfer of such items that are in their ownership from a third country to any other third country.

For EU sanctions, exporters should check the precise definition pertaining to each regime (country). However, the following definition usually applies:

'brokering services' means:

- (i) the negotiation or arrangement of transactions for the purchase, sale or supply of goods and technology or of financial and technical services, including from a third country to any other third country; or
- (ii) the selling or buying of goods and technology or of financial and technical services, including where they are located in third countries for their transfer to another third country;

What is torture-related equipment?

The controls on torture-related equipment are set out in the EU's Anti-Torture Regulation: *Regulation (EU) 2019/125 of the European Parliament and of the Council concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.*

The export or import of items listed in Annex II of the Anti-Torture Regulation is prohibited. The export of items listed in Annex III of the Regulation is subject to prior approval and licensing by the Department.

What are the controls on Firearms?

Export controls are in place for firearms, parts, components and ammunition.

Exports of firearms to third countries are the responsibility of the Department of Business, Enterprise and Innovation.

The Department of Justice and Equality is responsible for transfers of firearms within the EU.

The legal definition of these terms for exports of firearms outside the EU is set out in Regulation (EU) No. 258/2012 of the European Parliament and of the Council, commonly called the Firearms Regulation:

'firearm' means any portable barrelled weapon that expels, is designed to expel or may be converted to expel, a shot, bullet or projectile by the action of a combustible propellant as referred to in Annex I.

An object is considered as capable of being converted to expel a shot, bullet or projectile by the action of a combustible propellant if:

- it has the appearance of a firearm, and
- as a result of its construction or the material from which it is made, it can be so converted;

'parts' means any element or replacement element as referred to in Annex I specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm;

'essential components' means the breech-closing mechanism, the chamber and the barrel of a firearm which, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted;

‘ammunition’ means the complete round or the components thereof, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm, as referred to in Annex I, provided that those components are themselves subject to authorisation in the relevant Member State;

‘deactivated firearms’ means objects otherwise corresponding to the definition of a firearm which have been rendered permanently unfit for use by deactivation, ensuring that all essential parts of the firearm have been rendered permanently inoperable and incapable of removal, replacement or modification that would permit the firearm to be reactivated in any way.

Temporary Export of Firearms outside the EU

Export controls also apply to temporary exports, for example personal firearms for competitions or exhibition. In this case, the type of authorisation you need will depend on whether or not you are travelling with your firearm.

If you are exporting a firearm unaccompanied, you will need to apply for a Firearms Licence from the Department of Business, Enterprise and Innovation. If you are carrying the firearm with you, you will need to obtain a European Firearms Pass from An Garda Síochána. In addition, you will need to provide evidence of the event to which you are travelling to the Department of Business, Enterprise and Innovation.

Note:

Export controls on firearms also apply to temporary exports for competitions or exhibition.

What are the rules for Intra-EU Transfer of Equipment on the Common Military List?

Directive 2009/43/EC of the European Parliament and of the Council, of 6 May 2009, establishes a licensing regime for the intra-EU transfer of defence-related products. The purpose of this Directive is to simplify the rules and procedures applicable to such intra-Community transfers in order to ensure the proper functioning of the internal market.

Do I need an export licence?

Most dual-use items can move freely within the EU. However, a licence is required to export them to a third country (i.e. outside the EU). The exceptions, which require a transfer licence for movement within the EU, are very sensitive items such as nuclear materials, which are listed in Annex IV of the Dual-Use Regulation. A licence is required for transfers of military equipment within the EU, as well as for export to a third country (i.e. outside the EU).

The export or import of items listed in Annex II of the Anti-Torture Regulation is prohibited. The export of items listed in Annex III of the Anti-Torture Regulation is subject to prior approval and licensing by the Department.

There are corresponding licensing requirements for *brokering* of controlled goods and for providing *technical assistance* related to these goods.

The legal obligation to comply with export controls rests with the exporter.

How do I check if my goods are subject to export control?

- The list of controlled dual-use items is set out in Annex I of the Dual-Use Regulation.
- The list of controlled military equipment is set out in the EU Common Military List.
- The lists of controlled torture-linked equipment are set out in Annexes II and III of the Anti-Torture Regulation.

For many items their control status is determined by their performance characteristics. Often low-specification items are not controlled, while higher specification or very specialised models are controlled.

These lists are updated periodically to take account of advances in technology and geo-political developments.

In order to provide non-binding guidance on export control, the European Commission has published **Commission Recommendation (EU) 2019/1318**. This Recommendation provides advice to “to help exporters identify, manage and mitigate risks associated with dual-use trade controls and to ensure compliance with the relevant EU and national laws and regulations” in their internal compliance programmes. Particular consideration is given to the “rapid scientific and technological advancements and the complexity of today’s supply chains” in the guidance.

What is a *catch-all* control?

A *catch-all* is a legal provision for controlling exports of dual-use items *other* than those listed in Annex 1 of the Dual-Use Regulation. *Catch-all* controls are designed to provide a legal basis to apply controls in exceptional or unforeseen circumstances, without imposing an unnecessary burden on exporters engaged in legitimate trade.

Article 4 of the Dual-Use Regulation provides that the export of dual-use items not listed in Annex I will be subject to licensing if the exporter has been informed by the competent authority (i.e. the Department of Business, Enterprise and Innovation) that the items in question may be intended for use in connection with weapons of mass destruction or that the export would breach an arms embargo.

If an exporter is aware that dual-use items which it proposes to export, not listed in Annex I, are intended for any of the uses referred to above it must notify the Department, which will decide whether or to make the export concerned subject to authorisation.

In addition, under national legislation, the Minister for Business, Enterprise and Innovation may for reasons of public security or human rights considerations, prohibit an export of dual-use items not listed in Annex 1 of the Dual-Use Regulation.

What is the Cryptography Exemption?

ICT products, both hardware and software, that incorporate cryptography (i.e. data encryption) may come within the scope of the Dual-Use List (specifically, Category 5A002, 5D002 or 5E002) and are therefore subject to export control. This applies to a wide range of mainstream ICT items, including data storage, networking and security products.

However, there is an exemption for items that incorporate cryptography if they satisfy criteria, including all of the following:

- Generally available to the public,
- The cryptographic functionality cannot easily be changed by the user,
- Designed for installation by the user without further substantial support by the supplier, and
- details of the goods will be provided, upon request, to the competent authority in order to ascertain compliance.
-

Additional criteria apply to hardware components or executable software of such items.

For a complete specification of the exemption, exporters should consult with Note 3, *Cryptography Note*, Category 5 Part 2, Appendix I, Dual-Use Regulation. The European Commission has also provided a guidance note, '*FAQ on controls of 'Information Security' items and implementation of the Cryptography note exemption*'¹.

¹ http://trade.ec.europa.eu/doclib/docs/2016/october/tradoc_155052.pdf

What are Annex IV items?

Annex IV of the Dual-Use Regulation lists the most sensitive dual-use items. A Transfer Licence is required for intra-EU movement (i.e. between EU member states) of these items.

This list includes ICT systems designed to counter information security with crypto-analysis functionality (e.g. crack encryption) for the purpose of accessing confidential or sensitive data, passwords or cryptographic keys. The list also includes items and information for the development, production and use of such systems.

2. Procedure



What types of export licences are available?

The Department of Business, Enterprise and Innovation issues eight types of export licences under the different export control regimes: dual-use items; military equipment; anti-torture; and EU sanctions.

Individual Dual-Use Licences

Individual licences are issued in respect of a particular export transaction. Each licence authorises the export of specified dual-use items to a specified end-user. The licensed transaction must be completed within twelve months of the date of issue of the licence.

Global (Dual-Use) Licences

Global dual-use export licences may be issued to companies that have a very high volume of relatively low-risk exports. Global licences authorise multiple shipments of a specified range of goods and technology to one or more destination countries. However, they are only issued following a rigorous risk assessment of the goods and countries concerned and of the compliance history of the exporter. The goods and countries covered are subject to approval by the Department and are specified on the licence. End user certificates are required to use global licences.

Global dual-use export licences are issued subject to a number of strict conditions; in particular they are not valid for exports to military, police or state security forces end-users. They are also subject to reporting obligations, which may vary.

These licences are generally valid for twelve months.

Military Export Licences

Military licences are required for the export of any items listed in the EU Common Military List to any destination outside the EU. Each licence authorises the export of specified dual-use items to a specified end-user.

Global Transfer Licences for Defence-related Products

Global transfer licences facilitate the transfer of defence-related products between companies in EU Member States.

Brokering Activities Licences

Brokering licences are required for the negotiation or arrangement of the transfer of items listed on the EU Common

Military List, whether that transfer is from Ireland to a country outside the EU ('third country), from another EU Member State to a third country, or from one third country to another.

Licences under the Anti-Torture Regulation

These licences are required for the export of any goods listed in Annex III of the Anti-Torture Regulation.

General Export Authorisations

The Dual-Use Regulation (Annex II) defines a number of EU General Export Authorisations (GEA) which allow certain low-risk exports to proceed without requiring exporters to apply for an export licence. Exports must notify the Department that they are availing of a GEA within 30 days of first use of the GEA.

The most important such authorisation is EUGEA001 which covers exports of most dual-use items to Australia, Canada, Japan, New Zealand, Norway, Switzerland (including Liechtenstein), and the United States of America. In the event of a no-deal Brexit, this authorisation will also apply to the UK.

The other GEAs cover

- Export after repair/replacement,
- Temporary export for exhibition or fair,
- Export of certain telecommunications items,
- Exports of certain chemicals.

There are significant restrictions on the use of each GEA and exporters should consult the relevant section of the Regulation.

Energy-Related Products to Russia

A licence from this Department is required for the sale, supply, transfer or export of certain energy-related equipment and technology as listed in Annex II of Council Regulation (EU) No 833/2014, to any person, entity or body in Russia or any other country if such equipment or technology is for use in Russia. Prior authorisation is also required for the provision of technical assistance and brokering related to the sale, supply, transfer or export of these technologies to Russia or for use in Russia. A licence will not be granted if there are reasonable grounds to determine that the equipment or technologies are for use pertaining to deep water oil exploration and production, Arctic oil exploration and production, or shale oil projects in Russia.

How do I apply for an export licence?

To apply for an export licence or authorisation, a company must first register with the Department as an exporter by completing the Exporter Profile Registration Form on the On-line Export Licence Application System (OELAS).

Once your profile has been registered and approved, the Department will issue you with a Personal Identification Number by post and a username and password by email. Once you have received these, you will be able to login to OELAS and to submit an export licence application.

All applications must include the following information:

- consignee details (i.e. the immediate recipient – including distributors – of the goods)
- end-user details (i.e. the final recipient of the goods)
- details of goods to be exported
- the country of final destination of the goods
- An end-user Certificate.

The information regarding the goods to be exported should include a detailed description of the items, the Combined Nomenclature (CN) code and their control list number from Annex I of the Dual-Use Regulation.

The Combined Nomenclature is the EU's eight-digit coding system. It both serves the EU's common customs tariff and provides statistics for trade inside the EU and between the EU and the rest of the world.

Note:

Find OELAS at oelas.djei.ie

What is an end-use certificate?

Every application for an individual and global export licence must be accompanied by a certificate of end-use assurance, signed by the end-user of the goods in question. The end-user is the final recipient of the goods. The end-user (person or entity) may be different from the consignee.

If you are exporting to a distributor, you will need to know to whom they will distribute the goods. A distributor cannot sign an end-use certificate.

The certificate must specify the purposes for which the goods will be used. It must also provide the following assurances,

- The goods will not be used for any purpose connected with chemical, biological or nuclear weapons, or missiles capable of delivering such weapons;
- The goods will not be re-exported or otherwise re-sold or transferred if it is known or suspected that they are intended or likely to be used for such purposes;
- The goods will not be diverted to another destination; and
- In the event of the goods being so re-exported, the export will be conducted in accordance with the regulations of the national licensing authority in the end-user's country.

Template for end-use certificates for dual-use items and military equipment are available on the Department's website.

Note:

Find templates on dbei.gov.ie/en/Publications

How are decisions to refuse or grant licences made?

The Department of Business, Enterprise and Innovation assesses all export licence applications in accordance with the criteria set out in EU and national legislation. The Department is obliged to consult with other EU Member States if the products being exported are located in another EU Member State or if the products will transit through another EU Member State before reaching the ultimate end-user of the products. Consideration must also be given to end-users located in sanctioned countries.

The Department consults with the Department of Foreign Affairs regarding the political and human rights situation in the country of final destination at the time of the application.

The Department of Business, Enterprise and Innovation may annul, suspend, modify or revoke an export authorisation which has already been granted.

Considerations when assessing an Application for an Export Licence

The Dual-Use Regulation sets out the criteria for deciding whether to grant an individual or global dual-use licence. Article 12 requires that Member States take into account all relevant considerations, including,

- a) The obligations and commitments they have each accepted as members of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties.
- b) Their obligations under sanctions imposed by a common position or a joint action adopted by the Council or by a decision of the Organisation for Security and Cooperation in Europe (OSCE) or by a binding resolution of the Security Council of the United Nations.
- c) Considerations of national foreign and security policy, including those covered by Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment.
- d) Considerations about intended end-use and the risk of diversion.

The Common Position, referred to in point (c) above, sets out common criteria against which applications for exports of military goods should be assessed. These are summarised in Table 1.

Table 1: Criteria for Assessing Applications for Export Licences

Criterion One
Respect for the international obligations and commitments of Member States, in particular, sanctions adopted by the UN Security Council or the European Union, agreements on non-proliferation and other subjects, as well as other international obligations.
Criterion Two
Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law.
Criterion Three
Internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts.
Criterion Four
Preservation of regional peace, security and stability.
Criterion Five
National security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries.
Criterion Six
Behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law.
Criterion Seven
Existence of a risk that the military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions.
Criterion Eight
Compatibility of the exports of the military technology or equipment with the technical and economic capacity of the recipient country, taking into account the desirability that states should meet their legitimate security and defence needs with the least diversion of human and economic resources for armaments.

How long does it take to process a licence application?

The Department aims to process licence applications within 20 working days of receipt of all information required.

The processing time may be longer than 20 days if the end-use destination is particularly sensitive or if it is necessary for the Department needs to consult with another EU Member State.

Can I appeal a decision to refuse to grant my export licence application?

A statutory right of appeal is provided for in the Control of Exports (Appeals) Regulations 2018 (S.I. No. 457 of 2018). If you have been notified of a decision to refuse to grant or to revoke a licence, you may appeal the decision by writing to the Department at the address provided below within 28 working days of the date of being notified of the decision. You must set out the grounds for appeal and may include any relevant information that was not available at the time of the initial application.

The appeal will be considered by an officer who was not involved in the original decision to deny the export licence, and who is of equivalent, or more senior grade, to the officer who made the original decision. The original decision remains in force until the appeal has been decided. You will be notified in writing of the outcome of the appeal.

Appeals should be addressed to:

Trade Licencing and Control Unit
Department of Business, Enterprise and Innovation
Earlsfort Centre
Lower Hatch Street
Dublin 2
D02 PW01

What Terms and Conditions apply to Licences?

There are strict terms and conditions of use attached to each licence type and exporters should familiarise themselves with these to ensure full compliance. For example,

- Exporters must retain records of exports for at least 3 years (see Article 20 of the Dual-Use Regulation).
- Global licences may not be used in respect of military or Government-linked end-users.
- When availing of a General Export Authorisation, exporters must notify the Department of Business Enterprise and Innovation within 30 days of first use.

Failure to comply with the terms and conditions of a licence is an offence and could result in prosecution.

What are the penalties for non-compliance with export controls?

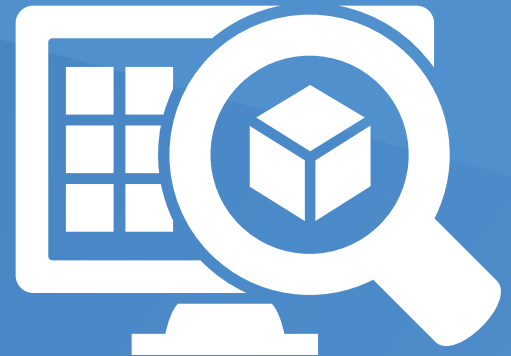
The penalties for breaches of export controls are set out in national legislation. The Control of Exports Act 2008 provides that a person who contravenes export controls for dual-use items or military equipment would be liable

- a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months, or to both, or
- b) on conviction on indictment to a fine not exceeding the greater of €10,000,000 or, where relevant, 3 times the value of the goods or technology concerned in respect of which the offence was committed, or to imprisonment for a term not exceeding 5 years, or both.

For each EU sanctions regime, of which there are more than 30 in effect, there is a corresponding national Statutory Instrument which sets out penalties for contravening the sanctions. In general, a person who contravenes a provision of EU sanctions would be liable

- a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months or both, or
- b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years, or both.

3. Administration of controls



What are Authorised Officers?

The Control of Exports Act 2008 provides for the appointment of Authorised Officers by the Minister for Business, Enterprise and Innovation. These officers have considerable powers to investigate a possible breach of export controls. These powers include the right to:

- Enter any business premises,
- Require the production of any licence or related records,
- Require a person to provide relevant information,
- Carry out examination and tests of goods or technology at the premises,
- Take samples of goods or technology for analysis,
- Secure for later inspection any premises or equipment at the premises.

What legislation applies?

EU and Irish export control legislation comprises:

- Control of Exports Act 2008
- Dual-Use Regulation
- National legislation in respect of exports and brokering activities for items on the Common Military List
- Anti-Torture Regulation
- Trade Sanctions

The Control of Exports Act 2008 is the main relevant piece of Irish legislation. It provides for the control of exports from Ireland, as well as the control of brokering activities of the provision of technical advice relating to listed goods.

Statutory instruments implement EU regulations and directives in Irish law. These instruments are updated regularly to ensure that Ireland fulfils its international obligations. An up-to-date list of all statutory instruments, including the full text of each instrument, can be found on irishstatutebook.ie.

The Dual-Use Regulation - Council Regulation (EC) 428/2009 of 5 May 2009 - is the most important European export control legislation. Annex I to the Dual-Use Regulation lists the dual-use items subject to control and requiring authorisation for export outside the EU. Annex I is amended annually to take account of changes made to control lists by the principal multilateral export control regimes.

The EU maintains and publishes a Common Military List of military items which should be controlled by

Member States.

The Anti-Torture Regulation – Council Regulation (EC) 1236/2005 – controls the import and export of certain goods which may be used for capital punishment, torture, or other cruel, inhuman and degrading treatment or punishment.

Trade sanctions are used by the international community as a means of exerting influence on various issues of international concern, such as terrorism or human rights abuses. You can find more information on trade sanctions on page 21.

Key Irish and European Law

- **Control of Exports Act 2008 No. 1 of 2018**
- **Dual-Use Regulation - Council Regulation (EC) 428/2009**
- **Anti-Torture Regulation – Council Regulation (EC) 1236/2005**
- **Common Military List of the European Union**
- **Firearms Regulation – Regulation (EU) No 258/2012 of the European Parliament and of the Council**

What are the multi-lateral non-proliferation regimes?

The global framework for export controls for dual-use items is underpinned by a number of global, multi-lateral non-proliferation regimes. These regimes are based on voluntary administrative agreements between participating countries to collaborate to protect global security. Each regime maintains a dynamic list of sensitive items within the scope of the regime, which participating countries are required to control due to the proliferation risks they pose. Technical experts from the participating countries propose and approve updates to the lists to reflect advances in technology and geo-political developments.

The EU list of dual-use items combines the individual lists produced by these regimes:

- The **Wassenaar Arrangement** supports export controls related to conventional arms and dual-use items across a wide range of goods and technologies including, materials, chemicals, ICT, marine and aerospace.
- The **Australia Group** aims to ensure that exports do not contribute to the development of chemical or biological weapons.
- The **Missile Technology Control Regime** aims to prevent proliferation of ballistic missiles and unmanned aerial vehicles systems capable of delivering weapons of mass destruction.
- The **Nuclear Suppliers Group** aims to prevent nuclear proliferation by controlling the export of materials, equipment and technology that can be used to manufacture nuclear weapons.
- The **Organisation for the Prohibition of Chemical Weapons** aims to implement the provisions of the Chemical Weapons Convention to achieve a world free of chemical weapons.
- The **Zangger Committee** maintains a Trigger List (triggering safeguards as a condition of supply) of nuclear-related strategic goods to assist in identifying equipment and materials subject to export controls.

Ireland participates in all six regimes.

Useful Links

Department of Business, Enterprise and Innovation

OELAS

Irish legislation

EU legislation

EU sanctions

Wassenaar Arrangement

Australia Group

Missile Technology Control Regime

Nuclear Suppliers Group

Organisation for the Prohibition of Chemical Weapons

dbei.gov.ie

oelas.djei.ie

irishstatutebook.ie

eur-lex.europa.eu

sanctionsmap.eu

wassenaar.org

australiagroup.net

mtcr.info

www.nuclearsuppliersgroup.org

www.opcw.org

The Department publishes 6 monthly export licensing statistics on its website. In addition, an Annual Report is published online each year. This contains aggregate data, with due regard for commercial sensitivity.

Contact us

For more information on export control, please visit dbei.gov.ie, or contact the Trade Licensing and Control Unit.

E exportcontrol@dbei.gov.ie

T +353 1 631 2121

Trade Licensing and Control Unit,
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