

New dual-use regulation introduces control of brokering and transit

The EU has adopted a new dual-use regulation (Council Regulation (EC) No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. See the Regulation under “Other links”.

The Regulation entered into force on 27 August 2009 introducing control of brokering and transit. At the same time the use of EU’s Community General Export Authorisation, EU001, has been simplified. Finally the control list (Annex I to the Regulation) has been updated.

Control of brokering

The Regulation introduces control of brokering concerning trade between two non-EU countries. The reason is that there have been examples internationally of brokers who have contributed to the build-up and proliferation of weapons of mass destruction.

The new rules imply that an authorisation to brokering is required concerning dual-use products when the products are listed in the control list (Annex I to the Regulation), and when the broker has been informed by the competent authorities or has learnt that the items in question are or may be intended for use in connection with weapons of mass destruction.

According to the Regulation brokering is defined as:

- the negotiation or arrangement of transactions for the purchase, sale or supply of dual-use items from third countries 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.

In order to comply with the provisions the broker must apply for an authorisation to brokering if:

- the broker has been ordered to apply for an authorisation by the Danish Enterprise and Construction Authority or The Danish Security and Intelligence Service, or if
- the broker has learnt that the controlled items in question, which the brokering concerns, are to be used in connection with weapons of mass destruction.

Control of transit

Further, the Regulation introduces control of transit of dual-use items if the items in question are or may be intended for weapons of mass destruction.

According to the Regulation transit is defined as dual-use items entering and passing through the customs territory of the Community with a destination outside the Community.

The provision means that the authorities can prohibit a specific transit if they have information based on intelligence sources or other sources which leads to reasonable grounds to suspect that the items in question are or may be intended, in their entirety or in part, for use in connection with weapons of mass destruction.

At the same time the provision opens up the prospect that the authorities can require additional information and require an authorisation to a specific transit if the items in question are or may be intended, in their entirety or in part, for use in connection with weapons of mass destruction.

Simplification concerning the application of the Community General Export Authorisation, EU001

An administrative simplification has taken place in connection with the application of the Community General Export Authorisation, EU001. (The EU001 can be applied when exporting to the seven closely related countries (Australia, Canada, Japan, New Zealand, Norway, Switzerland and the United States)).

Previously it has been a requirement that the exporter was registered with the Danish Enterprise and Construction Authority before the authorisation could be utilised.

With the new Regulation there is no longer a requirement of registration beforehand and the exporter may immediately export the items in Annex I under the authorisation. The exporter simply has to submit a registration with the Danish Enterprise and Construction Authority no later than 30 days after the first export has taken place under the authorisation.