

SUBSIDIARY LEGISLATION 365.12

**DUAL-USE ITEMS (EXPORT CONTROL)
REGULATIONS**

20th September, 2004

LEGAL NOTICE 416 of 2004, as amended by Legal Notices 425 of 2007 and 300 of 2013.

1. (1) The title of these regulations is the Dual-Use Items (Export Control) Regulations.

Citation and scope.
Amended by:
L.N. 300 of 2013.

(2) These regulations implement the provisions of Council Regulation (EC) No 1334/2000 of the 22nd June, 2000 setting up a Community regime for the control of exports of dual-use items and technology, as amended by Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (Recast), hereinafter referred to as "the Council Regulation".

2. (1) In these regulations, unless the context otherwise requires:

Interpretation.
Amended by:
L.N. 300 of 2013. Cap. 365.

"Act" means the National Interest (Enabling Powers) Act;

"basic scientific research" means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective;

"broker" means any natural or legal person or partnership resident or established in a Member State of the Community that carries out brokering services as defined by these regulations, from the Community into the territory of a third country;

"brokering services" means:

- (a) the supply or making available of information, practical assistance or funds, or the negotiations or the arrangement of transactions, in order to conclude an agreement relating to the transfer of dual-use goods from a third country to another;
- (b) the negotiations or arrangement of transactions for the purchase, sale or supply of dual-use items from a third country to another third country or the selling or buying of dual-use items located in third countries to transfer to another third country;"

"Community" means the European Community;

"Community general export authorization" means an export authorisation for exports to certain countries of destination available to all exporters who respect its conditions of use as listed in Annex II of the Council Regulation;

"country" includes territory;

"Director" means the director responsible for trade and includes any officer designated or authorised by the Director to act for a purpose or class of purposes of these regulations;

"dual-use items" means any used or unused items, including software and technology, which can be used for both civil and military purposes, and including all goods which can be used for both non-explosive uses and for assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices;

"export", unless the context otherwise requires, means an export from Malta, and includes:

- (a) re-export of dual-use items, and
- (b) the transmission of software or technology by fax, telephone or other electronic media; it includes making available in an electronic form such software and technology to legal and natural persons and partnerships. Export also applies to oral transmission of technology when the technology is described over the telephone;

"export declaration" means the act whereby a person indicates in the prescribed form and manner the wish to place dual-use items under an export procedure;

"exporter" shall mean any natural or legal person or partnership:

- (a) on whose behalf an export declaration is made, that is to say the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of the Community. If no export contract has been concluded or if the holder of the contract does not act on its own power for determining the sending of the item out of the customs territory of the Community;
- (b) which decides to transmit or make available software or technology by electronic media including by fax, telephone, electronic mail or by any other electronic means to a destination outside the Community.

Where the benefit of a right to dispose of the dual-use item belongs to a person established outside the Community pursuant to the contract on which the export is based, the exporter shall be considered to be the contracting party established in the Community;

"global export authorisation" means an authorisation granted to one specific exporter in respect of a type or category of dual-use item which may be valid for exports to one or more specified end users and, or in one or more specified third countries;

"import" and "export" in relation to a vessel, submersible vehicle or aircraft includes the taking into or out of Malta of the vessel, submersible vehicle or aircraft notwithstanding that the vessel, submersible vehicle or aircraft is conveying goods or passengers, and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

"in the public domain" means available without restriction upon further dissemination (no account being taken of restrictions arising solely from copyright);

"individual export authorisation" means an authorisation granted to one specific exporter for one end user or consignee in a third country and covering one or more dual-use items;

"international export control regimes, bodies and treaties" means the Australia Group, Missile Technology Control Regime, Nuclear Supplies Group, Wassenaar Arrangement, Zangger Committee and the Chemical Weapons Convention;

"military end-use" means:

(a) incorporation into military items listed in the military list;

(b) use of production-, test- or analytical equipment and components therefor, for the development, production or maintenance of military items listed in the military list;

(c) use of any unfinished products in a plant for the production of military items listed in the military list;

"military list" means the list of military equipment as established in the Military Equipment (Export Control) Regulations;

S.L. 365.13

"Minister" means the Minister responsible for trade;

"non-Community dual -use items" shall mean items that have the status of non-community goods within the meaning of Article 4(8) of the Community Customs Code;

"normal commercial journey" means a journey providing transport services in the ordinary course of business;

"person" means any natural or legal person;

"scheduled journey" means one of a series of journeys which are undertaken between the same two places and which together amount to a systematic service operated in such manner that its benefits are available to members of the public from time to time seeking to take advantage of it;

"surface effect vehicle" means any air cushion vehicle (whether side wall or skirted) and any vehicle using the wing-inground effect for positive lift;

"technical assistance" means any technical support related to repairs, development, manufacturing, assembly, testing, maintenance, or any other technical service, and may take the forms such as instruction, training, transmission of working knowledge or skills or consulting services; technical assistance includes also oral forms of assistance;

"transit" means a transport of non-Community dual-use items entering and passing through the customs territory of Malta with a destination outside the Community;

"vessel" includes any ship, surface effect vehicle, vessel of small waterplane area or hydrofoil, and the hull or part of the hull of a

vessel.

(2) Any reference in these regulations to time after an event is a reference to a period of that length of time beginning on the day after that event.

(3) In these regulations, except where the context otherwise requires, any reference to -

(a) a numbered regulation is a reference to the regulation in these regulations which is so numbered;

(b) a numbered subregulation is a reference to the subregulation which is so numbered in the regulation where the reference occurs.

Authorization.

3. (1) An authorization shall be required for the export of the dual-use items listed in Annex I of the Council Regulation.

(2) Pursuant to regulation 7 or regulation 8, an authorization may also be required for the export to all or certain destinations of certain dual-use items not listed in Annex I of the Council Regulation.

(3) An authorization shall also required for intra-Community transfers of dual-use items listed in Annex IV of the Council Regulation.

Transit of dual-use items.
Added by:
L.N. 300 of 2013.

3A. (1) The Director may prohibit the transit of non-Community dual-use items listed in Annex I of the Council Regulations if the items are or may be intended, in their entirety or in part, for uses referred to in Article 4(1) of the Council Regulation. When deciding on such a prohibition, the Director shall take into account the obligations and commitments Malta has agreed to as a party to international treaties or as a member of international non-proliferation regimes.

(2) Before deciding whether or not to prohibit a transit, the Director may impose in individual cases an authorisation requirement for the specific transit of dual-use items listed in Annex I of the Council Regulations if the items are or may be intended in their entirety or in part for the uses mentioned in Article 4(1) of the Council Regulation.

(3) The Director may prohibit the transit of non-Community dual-use items not listed in Annex I for uses referred to in Article 4(1) of the Council Regulation and to dual-use items for military end use and destinations referred to in Article 4(2) of the Council Regulation. When deciding on such a prohibition, the Director shall take into account the obligations and commitments Malta has agreed to as a party to international treaties or as a member of international non-proliferation regimes.

(4) Subregulation (2) shall also apply to the transit of non-Community dual-use items not listed in Annex I of Council Regulation referred to in subregulation (3).

(5) Subregulations (1), (2), (3) and (4) shall also apply to items which are transboarded from one vessel or aircraft onto another.

4. (1) The Director may grant authorizations for the export of dual-use items as specified in these regulations.

(2) Any authorization granted by the Director in pursuance of these regulations or having effect as if so granted may be:

- (a) either individual, global or general;
- (b) limited so as to expire on a specified date unless renewed;
- (c) subject to or without conditions, and any such condition may require or prohibit any act before or after the export of items under that authorization;
- (d) annulled, suspended, modified or revoked by the Director.

(3) An individual export authorization may be granted to an individual exporter, upon application on a form as set out in the Schedule, for the export of a specified dual-use item to a specified consignee up to the quantity specified in the authorization.

(4) A global export authorization may be granted to an individual exporter, upon application on a form as set out in the Schedule, for the export of specified dual-use items up to the quantities specified in the authorization, to specified consignees in one or more specified countries.

(5) When applying for an export authorization, exporters shall supply the Director with all the relevant information required for their applications.

(6) The Director shall process requests for authorisations for export within ninety working days from the date of receipt of the request:

Provided that if there are any missing documents which should have accompanied the request, the Director shall request the person making the request to submit such documentation within a time-period to be stipulated by the Director. If the requested documentation is not provided within the time -period stipulated, the request shall be deemed invalid and shall be cancelled:

Provided further that the period of ninety working days may, on reasonable grounds to be indicated by the Director, be extended for a further period of ninety working days.

5. (1) Subject to the provisions of these regulations -

- (a) no person shall make any export of items specified in Annex I of the Council Regulation, to any destination except under and in accordance with an authorization as specified in regulation 4;
- (b) no person shall export to any destination any dual-use items whether or not listed in Annex I of the Council Regulation which that person has grounds for suspecting 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

Granting and revocation etc., of authorizations.
Amended by:
L.N. 300 of 2013.

Exports of dual-use items.
Amended by:
L.N. 300 of 2013.

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, unless that person has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used;

(c) no person shall make to any destination any export consisting of the transmission by fax, telephone or other electronic media of dual-use items in the form of software or technology if:

(i) that person has been informed by a competent authority that the software or technology are or may be intended, in their entirety or in part, for any of the uses referred to in paragraph (b); or

(ii) that person is aware that the software or technology are intended, in their entirety or in part, for any of the uses referred to in paragraph (b); or

(iii) that person has grounds for suspecting that the software or technology are or may be intended, in their entirety or in part, for any of the uses referred to in paragraph (b), unless that person has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used; and

(d) no person shall provide technical assistance in any destination, if that assistance is intended, or the provider is aware that it is intended, in its entirety or in part, for any of the uses referred to in paragraph (b).

(2) Paragraphs (b) and (c) of subregulation (1) do not prohibit the export of any items in relation to which an authorization in writing has been granted by the Director, provided that all conditions attaching to the authorization are complied with.

(3) Paragraph (d) of subregulation (1) does not prohibit technical assistance -

(a) where it is provided in a Member State of the European Union or in a country listed in Part 3 of Annex II of the Council Regulation;

(b) where it takes the form of transferring information that is in the public domain, or consists of basic scientific research; or

(c) where it is in oral form and not related to items required to be controlled by one or more of the international export control regimes, bodies and treaties.

6. (1) Without prejudice to regulation 5(1), a Community general export authorization is hereby granted in respect of those items for export to those destinations, as specified in Annex II of the Council Regulation, subject to the conditions and requirements

set out therein and to any additional conditions and requirements as may be imposed by the Director. The items listed in Part 2 of Annex II of the Council Regulation and Part 2 of Annex IV of the Council Regulation are not covered by this Community general export authorization.

(2) The Community general export authorization specified in subregulation (1) cannot be utilised if the exporter knows at the time of export that the final destination of those items is outside the specified countries and no processing or working is to be performed on those items in those countries to which they are to be exported.

7. (1) An authorization shall be required for the export of dual-use items not listed in Annex I of the Council Regulation, if the exporter has been informed by a competent authority that the items in question are or may be intended, in their entirety or in part:

Dual-use items not listed in Annex I of the Council Regulation.

- (a) for any of the uses referred to in regulation 5(1)(b), or,
- (b) for use as parts or components of military equipment listed in the military list, which was previously exported without authorization or in violation of an authorization requirement.

(2) If an exporter is aware that dual-use items which he proposes to export, not listed in Annex I of the Council Regulation, are intended in their entirety or in part, for any of the uses referred to in subregulations (1)(a) and (1)(b) and regulation 8, he must notify the Director, who will decide whether or not it is expedient to make the export concerned subject to authorization.

8. (1) Without prejudice to regulation 7, the Director may prohibit or impose an authorization requirement on the export of dual-use items not listed in Annex I of the Council Regulation for reasons of public security or human rights considerations.

Imposition of authorization requirement in particular circumstances.

(2) An authorization shall also be required for the export of dual-use items not listed in Annex I of the Council Regulation, if the purchasing country or country of destination is subject to an arms embargo decided by a common position or joint action adopted by the Council of the European Union or a decision of the Organisation for the Security and Co-operation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations and if the exporter has been informed by a competent authority that the items in question are or may be intended, in their entirety or in part, for a military end-use.

(3) An authorization shall also be required for the provision of technical assistance relating to a military end-use, if that assistance is provided in countries of destination subject to an arms embargo referred to in subregulation (2).

8A. (1) Any person, whether natural or legal, wishing to offer any brokering service, must submit a written request to the Director for the issue of a licence to act as a broker. All the relevant information requested by the Director shall be provided in the written request.

Brokering services.
Added by:
L.N. 300 of 2013.

(2) No person shall offer any brokering services unless he is in possession of a licence issued by the Director to act as a broker.

(3) The Director may consult with the Police authorities, the Ministry of Foreign Affairs and the relative export control authorities located in other Member States, before making a final decision on whether to issue or deny a licence to act as a broker.

(4) The request mentioned in subregulation (1) shall include the following:

- (a) the name, address, identity card number or company registration number, e-mail address, telephone number and any other relevant contact details of the person making the request;
- (b) the item(s) or service(s) which the person making the request wants to provide brokering services for;
- (c) the reference code found in the dual-use list of the Council Regulation for the item(s) or service(s) indicated by the person making the request;
- (d) the end-use of the item(s) or service(s) subject to brokering services;
- (e) the end-use destination of the item(s) or service(s) subject to brokering services;
- (f) the relative Chemical Abstract Services (CAS) number, if applicable;
- (g) a recent Police Conduct Certificate; and
- (h) the date of the submission of a written request and the signature of the person making the request.

(5) A brokering licence issued under these regulations shall be limited to specific brokering services and to specific end-use destinations which will be determined by the Director on a case by case basis. These shall be indicated on the brokering licence itself.

(6) A brokering licence granted by the Director in pursuance of these regulations may be:

- (a) limited to a specific date;
- (b) subject to conditions;
- (c) annulled, suspended, modified or revoked by the Director.

(7) The Director shall process requests for the issue of a licence to act as a broker within sixty working days from the date of receipt of the written request:

Provided that if there is insufficient information or if additional information is requested by the Director, the Director shall request the person making the request to submit such information within a stipulated time-period. If the requested information is not provided within the time-period stipulated, the request shall be deemed invalid and shall be cancelled:

Provided further that the period of sixty working days may, on reasonable grounds to be indicated by the Director, be extended

for a further period of thirty working days.

(8) When the Director refuses to issue a licence to act as a broker he shall indicate the reason(s) for such refusal.

(9) A broker who is duly licensed by the competent authority of another Member State shall be deemed to be licensed under these regulations:

Provided that such broker provides the Director with a duly certified original document attesting such licence.

8B. A licenced broker shall submit a report regarding his brokering services to the Director every six months from the issue of the licence.

Reporting obligations.
Added by:
L.N. 300 of 2013.

8C. (1) An authorisation shall be required for brokering services of dual-use items listed in Annex I of the Council Regulation if the broker has been informed by the Director that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in Article 4(1) of the Council Regulation. If a broker is aware that the dual-use items listed in Annex I of the Council Regulation for which he proposes brokering services are intended, in their entirety or in part, for any of the uses referred to in Article 4(1) of the Council Regulation, he must notify the Director who shall decide whether or not it is expedient to make such brokering services subject to authorisation.

Authorisation requirements in relation to brokering services.
Added by:
L.N. 300 of 2013.

(2) Subregulation (1) shall also apply to non-listed dual-use items for uses referred to in Article 4(1) of the Council Regulation and to dual-use items for military end use and destinations referred to in Article 4(2) of the Council Regulation.

(3) An authorisation shall also be required on the brokering of dual-use items, if the broker has grounds for suspecting that these items are or may be intended for any of the uses referred to in Article 4(1) of the Council Regulation.

(4) The Director shall process requests for authorisations within ninety working days from the date of receipt of the request:

Provided that if there are any missing documents which should have accompanied the request, the Director shall request the person making the request to submit such documentation within a time-period to be stipulated by the Director. If the requested documentation is not provided within the time -period stipulated, the request shall be deemed invalid and shall be cancelled:

Provided further that the period of ninety working days may, on reasonable grounds to be indicated by the Director, be extended for a further period of ninety working days.

9. Any authorization granted as set out in these regulations may be subject, if appropriate, to certain requirements and conditions, such as an obligation to provide an end-use statement.

Provision of end-use statement.

10. (1) These regulations do not apply in respect of the supply of services or the transmission of technology if that supply or transmission involves cross-border movement of natural persons.

Exceptions.

- (2) Nothing in these regulations prohibits the export of: (a) any aircraft on a scheduled journey;
- (b) any aircraft the immediately preceding import of which was on a scheduled journey and which is intended for further scheduled journeys;
- (c) any vessel which is departing temporarily from Malta on trials;
- (d) any vessel proceeding on a normal commercial journey.

Customs procedures.

11. When completing the formalities for the export of dual-use items at the customs office responsible for handling the export declaration, the exporter shall furnish proof that any necessary export authorization has been obtained.

Misleading applications for authorizations etc.

12. (1) For the purposes of obtaining any authorization no person shall:

- (a) make any statement or furnish any document or information which to that person's knowledge is false in a material particular; or
- (b) recklessly make any statement or furnish any document or information which is false in a material particular.

(2) Any authorization which may have been granted by the Director in connection with an application for which a false statement was made or a false document or information was furnished shall be void as from the time it was granted.

Registration and provision of information.

13. (1) Not later than thirty days after any person makes an export for a first time by virtue of an authorization granted by the Director, or the Community general export authorization, that person shall give to the Director written notice of the following particulars:

- (a) the name of the person; and
- (b) the address at which copies of the records referred to in regulation 14 may be inspected by any person authorised by the Minister under regulation 14.

(2) A person who has given to the Director written notice of particulars under subregulation (1) shall, not later than thirty days after any change in those particulars, give to the Director written notice of the changed particulars.

Record keeping and inspection.
Amended by:
L.N. 300 of 2013.

14. (1) Exporters shall keep detailed registers or records of their exports. Such registers or records shall include in particular commercial documents such as invoices, manifests and transport and other dispatch documents, containing sufficient information to allow the following to be identified:

- (a) the description of the dual-use items;
- (b) the quantity of the dual-use items;
- (c) the name and address of the exporter and of the

consignee;

- (d) in so far as it is known to that person, the end-use of the items and the name and address of the end-user.

(1A) Brokers shall keep detailed registers or records for brokering services which fall under the scope of these regulations. Such registers and records shall contain sufficient information to allow the following to be identified:

- (a) the description of the dual-use items that were the subject of brokering services;
- (b) the period during which the items were the subject of such services and their destination; and
- (c) the countries concerned by the brokering services above-mentioned.

(2) The records referred to in subregulations (1) and (1A) shall be kept for at least three years from the end of the calendar year in which the export took place, and the person concerned shall permit any such records to be inspected and copied by any person authorised by the Minister.

(3) Any person authorised by the Minister may, on producing if required to do so a duly authenticated document showing his authority, at any reasonable hour enter, for the purpose of subregulation (2), the premises of which the address has most recently been notified to the Director under regulation 13.

(4) Where any documents or records referred to in subregulation (2) are kept in a form which is not legible, the exporter shall at the request of the person authorised by the Minister, reproduce such documents or records in a legible form.

15. (1) Any person in Malta, or any citizen or permanent resident of Malta, whether in Malta or elsewhere, who -

- (a) exports items from Malta by virtue of an authorization granted by the Director, or the Community general export authorization, and fails to comply with any condition attaching to that authorization, or
- (b) contravenes any of these regulations,

shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding five years or to a fine (*multa*) not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67).

(2) No person is guilty of an offence under subregulation (1)(a) where:

- (a) as the case may be:
- (i) the condition in question had been previously modified without that person's consent by the Director;
- (ii) in the case of the Community general export authorization the condition in question had been previously modified;

Offences and penalties.
Amended by: L.N. 425 of 2007.

- (b) the alleged failure to comply would not have been a failure had the authorization, or the Community general export authorization not been so modified; and
 - (c) that person proves that the items in relation to which he has failed to comply with the condition had, at the time the condition was modified, already been exported.
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SCHEDULE

(Regulation 4(3) and (4))

Authorization Application Form

Formola ta' l-Applikazzjoni ghall-Awtorizzazzjoni
UNJONI EWROPEA **Esportazzjoni ta' Oggetti li ghandhom Użu Doppju u Taghmir Militari**
EUROPEAN UNION **Export of Dual-Use Items and Military Equipment**

SERVIZZI TAL-KUMMERC, DIVIZJONI TAL-KUMMERC, Valletta, Malta TRADE SERVICES - COMMERCE DIVISION, Valletta, Malta	1. ESPORTATUR / EXPORTER Vat Nru / Fax No: Isem il-Kumpanija: Indirizz: Address: Isem il-persuna li tikkuntattja: Name of Contact Person: Tel. Nru / Tel. No: Fax Nru / Fax No:		2. DESTINATARJU / CONSIGNEE Isem: Name: Indirizz: Address: Isem il-persuna li tikkuntattja: Name of Contact Person: Tel. Nru / Tel. No: Fax Nru / Fax No: e-Mail:	
	3. AGENT I RAPPRESENTANT AGENT / REPRESENTATIVE Vat Nru / Fax No: Isem il-Kumpanija: Name of Company: Indirizz: Address: Isem il-persuna li tikkuntattja: Name of Contact Person: Tel. Nru / Tel. No: Fax Nru / Fax No:		4. UTENT FINALI END-USER Isem / Name: Indirizz: Address: Isem il-persuna li tikkuntattja: Name of Contact Person: Tel. Nru / Tel. No: Fax Nru / Fax No: e-Mail:	
	5. Pajjz ta' Origini Country of Origin	6. Pajjz fejn ser issir il-kunsinna Country of consignment	7. Pajjz tad-destinazzjoni finali Country of final destination	
	8. Stat Membru tal-lokazzjoni preżenti jew futura ta' l-oġġett Member State of current or future location of the item		9. Stat Membru fejn hu malsub li jsru l-proċeduri tad-Dwana għall-esportazzjoni Member State of intended entry into the customs export procedure	
10. Deskrizzjoni ta' l-oġġett* Description of the item*:		11. Kodici tal-kommodita' Commodity code	12. Lista tal-kontrolli Nru: Control list no:	
		13. Munita u valur Currency and value	14. Kwantita' ta' l-oġġett Quantity of the item	
15. Skop aħbari ta' użu / End use		16. Data tal-kuntratt Contract date	17. Proċedura tad-Dwana dwar l-esportazzjoni Customs export procedure	
18. Tagħrif addizzjonali magħus relevanti mill-esportatur / Additional information deemed relevant by the exporter:				
19. B'tan qiegħed rappreżentazzjoni għall-esportazzjoni dwar l-oġġetti imsejmi hawn fuq u niddikjara li l-partikolarjiet kollha minni forniti huma korretti. I hereby apply for an export authorization in respect of the goods described above and I declare that all the particulars furnished by me are correct.				
Firma / Signature		Isem b'tri kapitali / Name in Blocks	Nru. ta' l-Identifikazzjoni / I.D. No.	Data / Date
GHALL-UŻU TA' L-UFFIĊJU BISS / FOR OFFICE USE ONLY L-esportazzjoni għet awtorizzata. Din l-awtorizzazzjoni tbeqgħa valida sa: Export authorized. This authorization is valid until:			Nru. ta' Reġistrazzjoni: Registration No:	
Firma Signature		Isem b'tri kapitali Name in Blocks		
Data Date			Timbru Stamp	

* -Informatazzjonijiet tekniċi ta' l-oġġetti għandhom ikun meħruġa ma' din il-formola ta' applikazzjoni.