

## E-ALERT | International Trade Controls

January 6, 2012

### EU ADOPTS NEW GENERAL EXPORT AUTHORIZATIONS FOR DUAL-USE GOODS AND TECHNOLOGY

As of January 8, 2012, five new EU General Export Authorizations (“EU GEAs”) will become available to EU exporters. These new GEAs—which supplement the existing EU GEA (EU001) and national GEAs—are set out in the recently adopted [Regulation 1232/2011](#), which amends the EU’s Dual-use Regulation ([Regulation 428/2009](#)).

Regulation 1232/2011 also introduces measures intended to improve the exchange of information about the functioning of the EU dual-use export control regime among the Member States’ authorities.

#### EU DUAL-USE EXPORT CONTROL REGIME

Under the EU export control regime for dual-use items, controlled items (listed in Annex I to the EU Dual-use Regulation) can only be exported from the EU with an export authorization. (Transfers of most dual-use items within the EU do not require an export authorization.)

The Dual-use Regulation sets out four categories of export authorizations. Three categories of authorizations—individual, global, and general export authorizations—are issued at the national level; the fourth (EU GEAs) is issued by the EU.

Individual authorizations cover single or multiple exports of dual-use items to a single end-user. Global export authorizations cover multiple exports to multiple end-users. Both types of licenses are issued upon application by individual exporters. General authorizations (both EU and National General Export Authorizations or “NGEAs”), in contrast, cover multiple shipments to multiple end-users. They can be used upon a simple notification/registration with the competent Member State authority.

While seven Member States (Austria, France, Germany, Greece, Italy, the Netherlands and the UK) have NGAs in place, only Germany and the UK have adopted a range of NGEAs covering several types of EU dual-use exports. Exporters from Member States with few or no NGEAs are likely to reap the greatest benefit from the new EU GEAs.

#### EU GEAs

##### The new EU GEAs (EU002-006) supplement the existing EU GEA (EU001).

The existing EU GEA, EU001, authorizes exports of most dual-use items listed on Annex I to the EU Dual-use Regulation to Australia, Canada, Japan, New Zealand, Norway, Switzerland and the United States. Certain particularly sensitive items—including nuclear, stealth and cryptographic items—are excluded from EU001.

The new EU GEAs supplement EU001 as follows:

- **EU002** permits the export of a range of items included in **Categories 1 (Special materials and related equipment), 2 (Materials processing), and 3 (Electronics)** of Annex I to the EU Dual-use Regulation to Argentina, Croatia, Iceland, South Africa, South Korea and Turkey. Items covered by EU002 include certain advanced aerospace components, laser construction assemblies, superconducting materials, certain integrated circuits, and certain microprocessor and microcomputer microcircuits.
- **EU003** authorizes the export of most dual-use items listed on Annex I of the EU Dual-use Regulation where those items have been (i) exported from the EU under a valid license and (ii) re-imported to the EU for **purposes of repair, replacement or maintenance** within a period of five years from the date of original export. The authorization covers 24 potential destinations (Albania, Argentina, Bosnia and Herzegovina, Brazil, Chile, China, Croatia, Macedonia, the French Overseas Territories, Iceland, India, Kazakhstan, Mexico, Montenegro, Morocco, Russia, Serbia, Singapore, South Africa, South Korea, Tunisia, Turkey, Ukraine, and the United Arab Emirates).
- **EU004** covers **temporary exports for exhibitions and fairs**. EU004 extends to the same destinations as EU003, and covers most items listed on Annex I to the EU Dual-use Regulation. Notably, all items exported under EU004 must be reimported without modification back into the EU within 120 days.
- **EU005** authorizes exports of certain items listed under **Category 5 part 1 (Telecommunications)** of Annex I to the EU Dual-use Regulation. It authorizes exports to nine destinations: Argentina, China, Croatia, India, Russia, South Africa, South Korea, Turkey, and Ukraine. Items covered by EU005 include categories of radio telecommunications equipment, and telecommunications test and production equipment. EU005 also covers software and technology necessary for installing, operating, repairing and maintaining this equipment where that software / technology is exported for the use by the authorized end-user of the telecommunications equipment. Importantly, EU005 excludes exports of telecommunications equipment that could be used in connection with violations of human rights, democratic principles, or freedom of speech by the use of interception technologies and targeted surveillance.
- **EU006** covers the export of over 70 types of **chemicals** to Argentina, Croatia, Iceland, South Korea, Turkey and Ukraine.

### Common Conditions of Use of the EU GEAs

Use of the EU GEAs is subject to a number of requirements described below. Some of these requirements are specified in the text of EU GEAs and apply to exporters from all Member States. In some cases, Member States have adopted further conditions that apply only to domestic exporters.

- **NOTIFICATION.** In line with the EU Dual-use Regulation, all exporters using EU GEAs must provide notice of their use to relevant Member State authorities. Member States interpret the notification requirement differently: some Member States—including Poland and Spain—require the notification to be made prior to the first export under the EU GEA, while others—including Germany and the UK—require notification within 30 days from the date of the first export made under any of the EU GEAs.
- **REGISTRATION.** The EU Dual-use Regulation gives Member States the option to require exporters to register for the use of EU GEAs. Certain countries—including France or the Netherlands—

require registrations *prior* to the first export under an EU GEA while others—including Germany—require registration after the first export (usually, within 30 days thereafter). Still other Member States have no registration requirement at all.

- **REPORTING.** In addition to notification and registration requirements, some Member States require exporters to provide national authorities with information on exports made under EU GEAs. Certain Member States require exporters to make reports on a regular basis; others do not require any direct reports, or require reports only on request by a relevant Member State authority.
- **PROHIBITIONS.** Regulation 1232/2011 permits Member State authorities to prohibit the use of EU GEAs where they have a “reasonable suspicion” about an exporter’s ability to fully comply with the terms of EU GEAs or with export control legislation in general. Exporters prohibited from using EU GEAs are nevertheless allowed to apply for individual or global licenses to export dual-use items.
- **EXCLUDED USE OF EU GEAs.** Exports of dual-use items which (i) are or may be used in connection with weapons of mass destruction, (ii) will or may have a military end-use in countries subject to arms embargoes, or (iii) will or may be incorporated into military items exported from the EU without a valid export license, cannot benefit from EU GEAs.

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As noted, the new EU GEAs will be available for use from January 8, 2012. Exporters of dual-use items should analyze whether their exports could benefit from the new EU GEAs.

Our EU and US offices are deeply involved in advising clients on the application of the EU and US export controls and would be pleased to assist clients in navigating through the EU and EU Member States’ export controls rules and regulations.

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If you have any questions concerning the material discussed in this client alert, please contact the following members of our international trade controls practice group:

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