



News – July 23, 2021

WHAT'S NEW IN DUAL USE REGULATIONS



Dual-use items, including software and technology, are goods which are primarily meant for civil use, but that could also be used for military purposes.

The export, transfer, brokering, technical assistance and transit of dual-use items are subject to state control, both for national interest and for commitments arising from international understandings and agreements.

Currently, the regime of control of trade in dual-use items is governed, at European level, by Regulation (EC) No. 428/2009, transposed in Italy by Legislative Decree 221/2017, and by Decision No. 2000/401/CFSP.

Annex I of Regulation (EC) No 428/2009 lists the dual goods, divided into ten categories, numbered from 0 to 9; for each category there are subcategories with a literal code that identifies the particular type of dual goods:

- A – Systems, equipment and components;
- B – Testing, inspection and production equipment;
- C – Materials;
- D – Software;
- E – Technology.

The classification of dual-use items:

- a. is standardized with the adoption of the ECCN classification (or **dual use codes, other than customs codes**);
- b. is based on the nature of the goods themselves (e.g. type of product, software, or technology) and the relevant technical parameters;
- c. implies licensing, reporting and record-keeping requirements, and transportation requirements.

In order to understand whether a product is truly dual, one must:

1. Assess both the intended use of the product (end-use) and the end-user, which may be different from the purchaser (subjective due diligence).
In any case, it is necessary to verify that the parties involved in the transaction (end-user, recipient, intermediaries) are not black-listed according to EU decisions;
2. Examine the requirements and technical construction or design characteristics identified on the basis of the Dual Use code (objective due diligence).

By checking the TARIC database on the website of the Italian Customs Agency - <https://www.adm.gov.it/portale/taric> - a preliminary check can be made to ascertain whether or not the product in question is potentially dual use; if the wording "dual use authorization" appears, this does not mean that the product is really dual use, but **it is necessary to further verify whether the technical characteristics of the product are those identified in the list of dual use items**. If the characteristics of the products to be exported coincide with those described in Annex I of Reg. 428/2009, it will then be necessary for the exporting company to contact the Italian National Authority UAMA (Unit for the Authorizations of Armament Materials), at the Italian Ministry of Foreign Affairs and International Cooperation, in order to request and obtain the issue of an authorization to export such products.



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The EU legislation on Dual Use provides for 4 types of export authorizations:

- 1) Specific individual authorizations, based on the opinion of an interministerial advisory committee issued from time to time: they concern single export operations, which cannot benefit from other facilitated procedures;
- 2) Individual global authorizations, based on the opinion of an interministerial advisory committee, issued from time to time, to an individual non-occasional exporter, on the basis of a preliminary assessment of its reliability, for all types or categories of dual-use items and for one or more specific countries of destination;
- 3) European Union General Authorizations (AGEU, EU001 to EU006), valid for certain countries of destination, subject to certain conditions and requirements for use;
- 4) National General Authorizations (NGA), valid only for the following countries of destination: Antarctica - Italian Base, Argentina, South Korea and Turkey.

The penalties applicable in case of export of dual-use items in the absence or violation of the above authorization are provided for in Article 18 of Legislative Decree 221/2017. Specifically, the aforementioned provision provides for the following violations and related penalties:

- a) The export of dual-use items, whether listed or not, even in intangible form, the transit or intra-Community transfer or the provision of intermediation services concerning such items in the absence of the prescribed authorization: the penalty for this violation is imprisonment for a period of between two and six years or a fine of between €25,000.00 and €250,000.00, as well as the mandatory confiscation not only of the dual use products but also of the items that served or were destined to commit the crime or,

where this is not possible, the seizure of equivalent assets for a value corresponding to the price or profit of the crime;

- b) The carrying out of the same operations indicated above in non-compliance with the obligations laid down in the relative authorization: the penalty for this violation is imprisonment for a period of between 1 and 4 years or a fine of between €15,000.00 and €150,000.00, as well as the mandatory confiscation under the same terms as those set out in letter a) above.

For completeness of information, please note that Regulation (EC) no. 428/2009 has been fully replaced by Regulation (EU) no. 821/2021, which will come into force on September 9, 2021. T

The new regulation adds to the operations currently subject to control (i.e. export, transfer, intermediation and transit) also the activities of "technical assistance". Specifically, under certain conditions, EU suppliers who provide technical assistance of any kind (including remote assistance) on dual-use items to customers based in third countries will also be subject to the new regulation.

The new regulation extends controls also to computer security and espionage systems (computer surveillance technologies).