

ClientAlert

International Trade

13 December 2011

EU establishes new General Export Authorisations for dual-use items

The EU has amended the existing Dual-Use Regulation (Regulation 428/2009)¹ to create new General Export Authorisations at EU level, formerly known as “Community General Export Authorisations” (CGEA) and now renamed “Union General Export Authorisations” (UGEAs) in line with Lisbon Treaty provisions. New provisions aiming to enhance mechanisms for, *inter alia*, Member State information exchange, dual-use framework review and potential negotiations with third countries on mutual recognition agreements are also introduced. The amending Regulation (i.e. **Regulation 1232/2011**) was published in the EU’s Official Journal on 8 December 2011 and will enter into force on **7 January 2012**.²

Until now, only one General Export Authorisation has been available at EU level to facilitate – provided the relevant conditions of use listed in Annex II to Regulation 428/2009 are fulfilled – export procedures for a vast majority of controlled dual-use items destined for the United States, Canada, Japan, Australia, New Zealand, Switzerland and Norway. Following a drawn-out legislative process, the EU has now finally agreed to add five new UGEAs to this existing General Export Authorisation as part of ongoing efforts to simplify its dual-use system for low-risk exports. The new UGEAs are less ambitious than those originally proposed by the European Commission in late 2008, but represent important facilitations for EU exporters.

The introduction of these five new UGEAs also signify EU efforts to further harmonise export controls throughout the EU, as certain individual Member States already offer simplified export procedures for relevant types of export transactions under National General Export Authorisations. Accordingly, the new UGEAs attempt to establish a level playing field for all EU exporters while ensuring consistency and efficiency of the EU’s security controls.

Regulation 1232/2011 amends Annex II to the Dual-Use Regulation so that it now encompasses six UGEAs, each of which have a different product scope, a different list of “friendly destinations” and different conditions and requirements for use. These UGEAs cover:

- export of **most dual-use items** to the United States, Canada, Japan, Australia, New Zealand, Switzerland, including Liechtenstein, and Norway (i.e. a slightly amended version of existing CGEA No EU001, now featured as UGEA No EU001 in Annex IIa);
- export of **19 specified categories of dual-use items** to Argentina,



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¹ 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, [2009] OJ L 134/1, as amended. A consolidated version of Regulation 428/2009, which does not include the new amendments, is available here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2009R0428:20090827:EN:PDF>.

² [Regulation \(EU\) No 1232/2011](#) of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, [2011] OJ L 326/26.

³ See Article 1(3) of Regulation 1232/2011, inserting revised Article 9(1) into Regulation 428/2009.

⁴ See Article 1(10) of Regulation 1232/2011, inserting new Article 25a into Regulation 428/2009.

International Trade

Croatia, Iceland, South Africa, South Korea and Turkey (UGEA No EU002 in Annex IIb);

- export of certain dual-use items **after repair/replacement** to 24 specified destinations (UGEA No EU003 in Annex IIc);
- temporary export of certain dual-use items **for an exhibition or fair** to 24 specified destinations (UGEA No EU004 in Annex II d);
- export of **listed telecommunication products and technology** to 9 specified destinations (UGEA No EU005 in Annex IIe); and
- export of **specified chemicals** to Argentina, Croatia, Iceland, South Korea, Turkey, and the Ukraine (UGEA No EU006 in Annex II f).

To enable Member States to block certain individual UGEA transactions when they are considered to prejudice national security interests, a new provision is inserted into Regulation 428/2009 which **prohibits the use of an UGEA by a specific exporter** if a Member State has “reasonable suspicion about [the exporter’s] ability to comply with such authorisation or with a provision of the export control legislation”.³ In addition, attempts are made to promote coherent Member State practices in this context as **Member States are obliged to exchange information** on those exporters which are blocked from using an UGEA.

Regulation 1232/2011 also foresees the possibility for **EU negotiation of mutual recognition agreements** with third countries aiming in particular to eliminate authorisation requirements for re-exports within EU territory.⁴

Finally, the Regulation mandates the Commission to submit a report on the amendments – with a specific focus on implementation of UGEA No EU002 – before 2014, in which it is foreseen that a legislative proposal for an additional UGEA covering **low-value shipments** may be included.

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