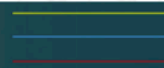




Interpretation of Annex I : comprehensive or indicative

Pr. Dr. Quentin MICHEL

ESARDA, Export Control Working Group
4th meeting
Paris – April 16th, 2013



1. Principle

2. Provisions of the Regulation 428/2009 **limiting** the scope of Annex I

3. Provisions of the Regulation 428/2009 **extending** the scope of Annex I

4. Few words about technical **assistance**



Principle

Principle

The list of items is **comprehensive**, thus it does not offer room for interpretation for Member States.

Article 3

1. *An authorisation shall be required for the export **of the dual-use items listed in Annex I.***

Items could be divided in **subcategories** and some terms marked with “” in the Annex are defined individually

Example

0A001 «Nuclear reactors» and specially designed or prepared equipment and components therefor, as follows:

- «Nuclear reactors»;
- Metal vessels, or major shop-fabricated parts therefor, including the reactor vessel head for a reactor pressure vessel, specially designed or prepared to contain the core of a «nuclear reactor»;
-

Example

« **Nuclear reactor** » (0) means a complete reactor capable of operation so as to maintain a controlled self-sustaining fission chain reaction.

A « nuclear reactor » includes all the items within or attached directly to the reactor vessel, the equipment which controls the level of power in the core, and the components which normally contain, come into direct contact with or control the primary coolant of the reactor core.

Principle

Nevertheless, some listed items including their definitions are not **sufficiently detailed** and, consequently, **all components** of a listed item are not necessarily mentioned as such in the list.

Principle

- No **common understanding** between Member States or not perceived as an problem
 - Up to **National** competent Authority to **decide** if an authorisation should be required
- Crosscheck with national export authority is necessary

Principle

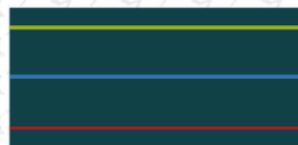
An Item should be controlled even if it constitutes a **component of a non-listed items**

*“The object of the controls contained in this Annex should not be **defeated by the export of any non-controlled goods** (including plant) **containing one or more controlled components** when the controlled component or components are the **principal element** of the goods and can **feasibly be removed** or used for other purposes.*

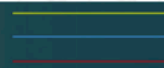
Principle

*In judging whether the controlled component or components are to be considered the principal element, it is necessary to **weigh the factors of quantity, value and technological know-how involved and other special circumstances** which might establish the controlled component or components as the principal element of the goods being procured”.*

General Note 2 to Annex I



Provisions of the Regulation 428/2009 limiting the scope of Annex I

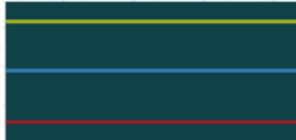


Limiting the scope (1)

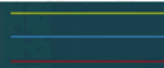
- Transfer of Annex I related technology through cross-border movement of natural persons is **not covered by the Regulation** (Article 7)
- Any technology, which is in the **public domain** or is necessary for the **basic scientific research** or constitutes the minimum necessary for **patent application** is not controlled by the Regulation

Limiting the scope (2)

- **Public domain:** technology available without any restrictions upon further dissemination (copyright do not remove technology from in the public domain)
- **Basic scientific research** experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles and of phenomena or observable facts not primarily directed towards a specific practical aim or objective



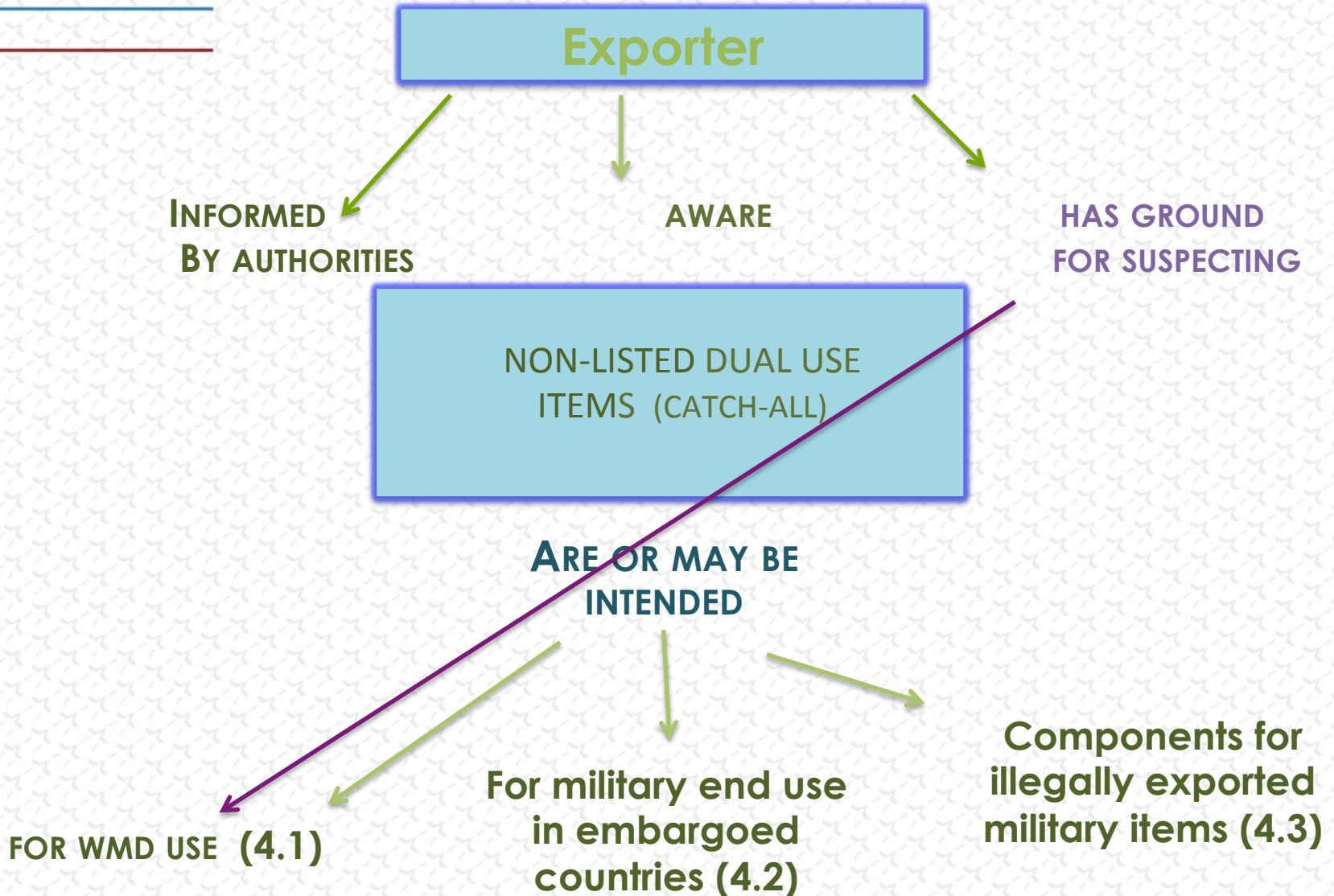
Provisions of the Regulation 428/2009 extending the scope of Annex I



Extending the scope

- **Catch-all clause** (export, transit, brokering)
 - Has been informed, is aware, has grounds for suspecting
- Control for reasons of **public security** or human right considerations
 - Non-listed items

Catch-all clause (Article 4)



Transit (Article 6)

Transit of listed
dual-use items

MAY BE SUBMITTED TO LICENCE
OR PROHIBITION IF

Are or may be intended

FOR WMD USE
(4.1)

MAY EXTEND:

1. TO NON-LISTED ITEMS (4.1)
FOR WMD USE
2. FOR **LISTED and NON-LISTED
ITEMS** MILITARY END USE IN
EMBARGOED COUNTRIES (4.2)

Brokering (article 5)

Exporter

**INFORMED
BY AUTHORITIES**

AWARE

**HAS GROUND
FOR SUSPECTING**

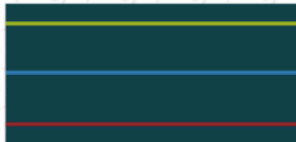
LISTED DUAL USE ITEMS

**ARE OR MAY BE
INTENDED**

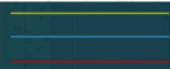
**FOR WMD USE
(4.1)**

**FOR WMD USE OF
NON-LISTED ITEMS
(4.1)**

MAY EXTEND:
**1. TO NON-LISTED
ITEMS FOR WMD USE
(4.1)**
**2. FOR LISTED AND
NON-LISTED ITEMS
FOR MILITARY END
USE IN EMBARGOED
COUNTRIES (4.2)**



Few words about the scope of technical assistance



- (a) "technical assistance" means any **technical support** related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and **may take forms** such as instruction, training, transmission of working knowledge or skills or consulting services;
- (b) "technical assistance" includes **oral forms** of assistance;

No reference to Annex I

Technical Assistance related to **"international export control regimes, bodies and treaties"** should be understood as that covered by *the Australia Group, Missile Technology Control Regime, Nuclear Suppliers Group, Wassenaar Arrangement, Zangger Committee and the Chemical Weapons Convention.*

WMD **and** certain military items
(Munitions lists of the WA)

Transactions to be controlled

where it is provided **outside** the European Community by a natural or legal person established in the European Community and is **intended**, or the **provider is aware** that it is intended, for use in connection with WMD

Where it is related to **military end-uses** and is **provided** in countries of destination subject to an **arms embargo** decided by a common position or joint action adopted by the Council or a decision of the OSCE or an arms embargo imposed by a binding resolution of the Security Council of the United Nations.

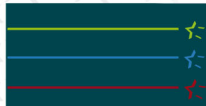
Exceptions

Does not apply to "technical assistance":

(a) where it is provided in a **country listed in Part 3 of Annex II** to Regulation (EC) No 1334/2000;

Raised some concern as it has been adopted when only one EUGEA was available

(b) where it takes the form of transferring information that is "in the **public domain**" or "**basic scientific research**" as these terms are respectively **defined** in the international export control regimes, bodies and treaties; or



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