



Council of the European Union
General Secretariat

**Interinstitutional files:
2016/0295(COD)**

Brussels, 14 May 2020

WK 5073/2020 INIT

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WORKING PAPER

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From:	Presidency
To:	Working Party on Dual-Use Goods
Subject:	Revised compromise proposal on EUGEA 007

The Presidency is grateful for the Member States' comments received on previous compromise proposals, discussed at the informal DUWP video meeting on 6 May. Delegations will find attached a revised compromise proposal on EUGEA 007, reflecting proposed changes submitted orally during the meeting and in written to the Presidency, and invites Delegations to mark their agreement or to provide further comments by **Monday 18 May, 4pm (CEST)** to be sent to the Secretariat: non.proliferation@consilium.europa.eu with the Presidency in copy.

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Possible text on the basis of nothing is agreed until everything is agreed principle

PRES compromise proposals

Changes to the WK 2695-re01/20 and WK 5403/20 are highlighted

G. INTRA-GROUP EXPORT OF SOFTWARE AND TECHNOLOGY

UNION GENERAL EXPORT AUTHORISATION NO EU007

(referred to in Article 10(1)(d) of this Regulation)

Intra-group export of software and technology

Issuing authority: European Union

Part 1 – Items

This general export authorisation covers all technology and software specified in [...] Annex I to this Regulation, except those listed in Section I of this Annex and technology and software related to items under 4A005, 4D004, 4E001.c, 5A001.f and 5A001.j.

Part 2 – Destinations

This authorisation is valid throughout the customs territory of the Union for the export of software and technology to Argentina, Brazil, Chile, India, Indonesia, Israel, Jordan, Malaysia, Morocco, Mexico, Philippines, Singapore, South Africa, South Korea, Thailand **and** Tunisia **and Vietnam** [...].

Commented [A1]: Deleted following technical meeting

Part 3 – Conditions and requirements for use

1. This authorisation authorises the export of software and technology listed in Part 1 by any exporter **that is a legal person** ~~resident or~~ established in a Member State of the Union to a ~~an~~ **entity** company wholly owned and controlled by the exporter (hereinafter "its subsidiary") or to a ~~an entity~~ company ~~who a~~ directly and wholly owned and controlled ~~subsidiary of~~ by the same parent ~~entity~~ company ~~of~~ as the exporter (hereafter - "sister ~~entity~~ company"), provided that:

- ~~(1) In the case where the entity receiving the export is a subsidiary of the exporter, such subsidiary is wholly owned and controlled by the exporter,~~

Commented [A2]: DUWP agreed that only companies can formally act as an exporter to make use of EUGEA 007 - intra-group export. So, we clarify that the exporter is a legal person (within the meaning of Article 2.3 setting out the definition of "exporter") and we remove "resident or" that does not apply to legal person.

- ~~(2) In the case where the entity receiving the export is a sister company of the exporter,~~
~~(a) both the exporter and the sister company receiving the export are directly controlled by the same parent company;~~
- (1) the parent ~~entity~~ company that controls directly and the entity ~~person~~ ultimately controlling the exporter are resident or established in a Member State of the Union or in a country covered by EU001, and
 - (2) the parent company ~~entity company~~ that controls directly the exporter provides a binding ~~and enforceable~~ guarantee for the sister ~~entity's~~ company's compliance with the requirements of this authorisation. ~~[...]~~

For the purpose of this Annex, authorisation a parent ~~entity~~ company '~~parent company~~' is a ~~person that~~ controls another ~~person entity~~ company when it is capable of exercising decisive influence on it.

Commented [A3]: Incorrect reference to the Annex, refers to this authorisation

- (3) the exported software and technology will be exclusively used ~~by such subsidiary or sister company and the exporter and their respective employees~~, for the commercial product development activities of the exporter and the subsidiary or sister company ~~entity company~~ respectively, and, in the case of employees, pursuant to the agreement establishing the employment relationship, and
- (4) the exported software and technology and any products resulting therefrom remain under the complete control of the exporter, or, for the purpose of fulfilling the requirements of this authorisation when the export is directed to a sister company ~~entity~~, under the complete control of the parent ~~entity~~ company that controls directly the sister company ~~entity~~ and will not be shared re-exported to with any other entity ~~person third party~~, and
- (5) the exported software and technology will be returned to the exporter and completely deleted by the subsidiary or sister ~~entity~~ company when the development activity has been completed or in the event that the subsidiary or sister ~~entity~~ company is acquired by any other entity ~~person third party~~. Any resulting developed technology will also be transmitted to the exporter and completely deleted by the subsidiary or sister company ~~entity~~.

Commented [A4]: "entity" is proposed as a broader term than "person" and also because "entity" is already used in point (1)

Commented [A5]: aligned with previous paragraph

2. This authorisation does not authorise the export of software and technology where:

- (1) the exporter has been informed by the competent authority of the Member State in which he is ~~resident or~~ established that the software or technology in question is or may be intended, in its entirety or in part:
- (a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or 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;
 - (b) for a military, paramilitary, police, intelligence, ~~or surveillance end-use~~, or other security end-use by the government **or by entities acting on behalf of the government;** or
 - (c) for use as parts or components of military items listed in the national military list that have been exported from the territory of the Member State concerned without authorisation or in breach of an authorisation prescribed by the national legislation of that Member State;
 - (d) for use in connection with a violation of human rights, democratic principles or freedom of speech as defined by the Charter of Fundamental Rights of the European Union, ~~by using interception technologies and digital data transfer devices for monitoring mobile phones and text messages and targeted surveillance of Internet use (e.g. via Monitoring Centres and Lawful Interception Gateways);~~
- (2) the exporter [...] is aware that the software **or** technology in question is intended, in its entirety or in part, for any of the uses referred to in subparagraph 1; or
- (3) the exporter [...] is aware that the software or technology in question will be re-exported to any destination other than those listed in Part 2 of Section A of this Annex and the Member States.
- (4) the exporter is aware that the consignee or end-user of the items in question is a military, paramilitary, police or intelligence service, or another governmental security service for security, or that the items are intended for entities acting on behalf of any of the aforementioned services;

Commented [A6]: Aligned with EUGEA 008 wording

Commented [A7]: One MS would like to keep this para in both EU007 and EU008. 1(b) covers info from the competent authority that end use is not acceptable (4) covers exporter awareness of a particular kind of end user. The justification for keeping both is that some of the end-users described in (4) may have a broad mandate, incl legitimate uses such as rescue services. So an item could be exported for legitimate use such as rescue services, bypassing 1(a), and then be transferred for mil end-use by the recipient within its broad mandate. To cover this case one needs a specific reference to end user. Of course, the competent authority could grant an individual license anyway, after satisfying itself that the risk of diversion to other end-uses is at an acceptable level (perhaps by requiring an end-use undertaking).
HR PRES agrees with that proposal

A Member State may adopt national legislation expanding the provisions of subparagraphs 2(2) and 2(3) above to cover circumstances where the exporter has grounds for suspecting that the software or technology in question are intended for the uses referred to in subparagraphs 2(2) or 2(3) above.

3. Any exporter intending to use this authorisation ~~shall~~ **will** implement an Internal Compliance Programme.

Commented [A8]: Changed to "will". Used in Annex according to best practices on legislative drafting

~~Pursuant to Article 22, Member States shall provide for effective, proportionate and dissuasive penalties applicable to the parent entity in case the exporter or the affiliated entity fail to comply with the requirements of this authorisation.~~

4. Exporters will declare that the items are being exported under Union general export authorisation EU007 in the customs declaration in the case of tangible export of software or technology.

5. Any exporter intending to use this authorisation will register prior to the first use of this authorisation with the competent authority of the Member State where he is resident or established. Registration will be automatic and acknowledged by the competent authority to the exporter within 10 working days of receipt

Commented [A9]: Same paragraph as in 008 to accommodate discussion in video-DUWP (comment by one MS).

- ~~56.~~ Any exporter who uses this authorisation must notify the competent authority of the Member State where he is ~~resident or~~ established of the first use of this authorisation no later than 30 days prior to the date of the first export.

- ~~67.~~ Any exporter who uses this authorisation ~~must~~ **will** ~~reporting requirements attached to the use of this authorisation~~ to the competent authority of the Member State where he is ~~resident or~~ established on the use of this authorisation. The report on the use of this authorisation **will** ~~shall~~ be produced at least once per year and **will** ~~shall~~ include at least information regarding:
- (1) the description of the software and technology;
 - (2) {where available,} the quantity and the value of the software and technology;
 - (3) the subsidiaries, sister entities and parent entities involved under this authorisation.

Commented [A10]: Aligned with wording in EUGEA 008

Additional information that the Member State from which the export is made might require on items exported under this authorisation are defined by Member States.

~~Where applicable, the requirements set out in this paragraph will be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.~~

~~[...]~~