



Council of the European Union
General Secretariat

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

Brussels, 06 July 2020

WK 7357/2020 INIT

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From:	General Secretariat of the Council
To:	Working Party on Dual-Use Goods
Subject:	Revised PRES compromise proposal - EUGEA 008

PRES compromise proposal

Changes to the previous versions (WK 5346/2020, WK 4502/20, WK 2697/20) are highlighted

H. ENCRYPTION

UNION GENERAL EXPORT AUTHORISATION NO EU008

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

Encryption

Issuing authority: European Union

Part 1 — Items

This general export authorisation covers dual-use items specified in [...] Annex I to this Regulation as follows:[...]

- **5A002.a.2,**
- **5A002.a.3,**
- 5A002.b., **only** 'cryptographic activation token' converting, by means of "cryptographic activation", an item not specified in Category 5 – Part 2 into an item specified in 5A002.a. **as above** or 5D002.c.1. **as below**, and not released by the Cryptography Note (Note 3 in Category 5 – Part 2);
- 5D002.a.1, **only** "Software" specially designed or modified for the "use" of equipment specified in 5A002.a **as above** or "software" specified in 5D002.c.1. **as below**,
- 5D002.b., "Software" having the characteristics of a 'cryptographic activation token' specified in 5A002.b. **as above**;
- 5D002.c.1, **only** "Software" having the characteristics of, or performing or simulating the functions of equipment specified in 5A002.a. **as above**;
- 5E002.b., **only** "Technology" having the characteristics of a 'cryptographic activation token' specified in 5A002.b. **as above**.

This authorization is only valid if the items meet all of the following:

~~They use standard encryption algorithms that have been approved or adopted by internationally recognised standards bodies (e.g. 3GPP, ETSI, GSMA, IEEE, IETF, ISO, ITU, TIA);~~

- They use or implement only published or commercial cryptographic standards that have been approved or adopted by an internationally recognised standard body bodies.
- They do not use cryptographic standards specially designed for government use only (e.g. the cryptographic standards used in public safety radio systems, such as TETRA, TETRAPOL and P25 standard); and
- Any cryptographic functionality used by the item cannot be easily changed by the user. ÷and
- ~~{They are not approved for official use by the competent authorities of the Member State where the exporter is resident or established.}~~

This authorisation cannot be used if:

- The exporter has been informed by the competent authority of the Member State in which he is resident or established, or is otherwise aware (e.g. from information received from the manufacturer), that the items in question have been approved or classified by the designated authority in a Member State (or are in the process of approval or classification) to process or transmit classified information, equivalent to or above RESTREINT UE/EU RESTRICTED.
- The exporter has been informed by the a competent authority of the Member State in which he is resident or established, or is otherwise aware (e.g. from information received from the manufacturer), that the items in question have been classified by any EU-competent the designated authority in a Member State (or are in the process of classification) as having a protective national security classification marking, equivalent to or above RESTREINT UE/EU RESTRICTED.

Part 2 — Destinations

This authorisation is valid throughout the **customs territory of the** Union for exports to all destinations, excluding all of the following[...]:

- destinations eligible for export under EU001;
- Afghanistan, Armenia, Azerbaijan, Belarus, Burma (Myanmar), Cambodia, Central African Republic, China (including Hong Kong and Macao), Democratic Republic of Congo, Republic of the Congo, Egypt, Eritrea, Georgia, Iran, Iraq, Kazakhstan, Kyrgyzstan, Lebanon, Libya, [Malaysia], Mali, Mauritius, Mongolia, North Korea, Oman, Pakistan, Russian Federation, Qatar, Saudi Arabia, Somalia, South Sudan, Sudan, Syria, Tajikistan, Turkmenistan, United Arab Emirates, Uzbekistan, Venezuela, Yemen, Zimbabwe; and

- c. **any destination, other than those listed in b above, subject to an arms embargo or subject to restrictive measures of the Union applicable to dual-use items ~~goods, software and technology.~~**

Part 3 — Conditions and requirements for use

1. This authorisation does not authorise the export of items where:
- (1) the exporter has been informed by the competent authority of the Member State in which he is resident or established that the items in question are or may be intended, in their 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;**
 - (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; or
 - (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 items in question are intended, in their entirety or in part, for any of the uses referred to in subparagraph 1;

- (3) the exporter [...] is aware that the items in question will be re-exported to any destination **excluded by b or c of Part 2 of this Annex authorisation**;
 - (4) the relevant items are exported to a customs-free zone or a free warehouse which is located in a destination covered by this authorisation;
 - (5) **the exporter is aware or has been informed by the competent authority that the consignee or end-user of the items in question is a military, paramilitary, police or intelligence service, or another governmental service for security, or that the items are intended for entities acting on behalf of any of the aforementioned services; or**
 - (6) **the export is controlled by virtue of any entry in Annex I to this Regulation not specified in this Union general export authorisation.**
2. **Where a customs declaration is required**, exporters **will** declare that the items are being exported under Union General Export Authorisation EU008 in the customs declaration.
 3. 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.
 4. The registered exporter **will** notify the first use of this authorisation to the competent authority of the Member State where he is resident or established, no later than 10 days before the date of the first export.
 5. **The exporter will prior to the first export of each item, at the request of the competent authority of the Member State where he is resident or established, submit technical data of any export planned or conducted under this authorisation. If such technical data has been requested in relation to a specific item and the technical data changes, the exporter will notify the competent authority of this without delay. The technical data will include at least the following information of the item:**
 - (1) **manufacturer;**
 - (2) **product name;**
 - (3) **model number;**

- (4) **item description - a brief general description of the item such as might be contained in a product brochure;**
 - (5) **When necessary, as determined by the competent authority, technical specifications, which will include:**
 - (a) **a list of all relevant cryptographic algorithms, including associated key management, related to data confidentiality;**
 - (b) **a list of any protocols to which the item adheres;**
 - (c) **specification of pre- or post-processing of data, such as compression of plain text or packetizing of encrypted data;**
 - (d) **details of programming interfaces that can be used to gain access to the cryptographic functionality of the item;**
 - (6) **Export Control Classification.**
6. **The Competent Authority of the Member State where the exporter is resident or established may, for reasons of national security, prohibit the exporter from using this General Export Authorisation for any item mentioned in part 1. The Member State concerned shall inform the Commission and the other Member States on the use of this provision.**
7. The registered exporter **will at the request of** ~~report to~~ the competent authority of the Member State where he is resident or established **report** on the use of this authorisation. **Upon request** ~~The~~ report on the use of this authorisation **will** be produced at least once per year and will include at least the following information:
- (1) ~~a reference to the last submission of technical data of the dual-use items~~ **export control classification of the dual-use items;**
 - (2) the quantity and the value of the dual-use items;
 - (3) the name and address of the consignee;
 - (4) where known, the end-use and end-user of the dual-use items;
 - (5) ~~When requested,~~ **a reference to the last submission of technical data for the dual-use items.**

8. Information and reporting requirements attached to the use of this authorisation and described under paragraphs 5 and 76 above may alternatively be defined by the Member State where the exporter is resident or established.

Part 4 — Templates

1. **Template for technical submission according to Part 3, paragraph 54 (to be added).**
2. **Template for yearly report according to Part 3, paragraph 75 (to be added).**