



Bundesamt
für Wirtschaft und
Ausfuhrkontrolle

Brief Outline

Export Controls





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Ausfuhrkontrolle

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The new edition refers to the development since 01.01.2007 as compared to the Brief Outline of 1 March 2007. Besides the current legal situation it provides an overview of the amendments resulting from the recast of Council Regulation (EC) No. 1334/2000 of 22 June 2000 that was adopted on 05.05.2009. The recast of Regulation (EC) No. 1334/2000 will enter into force 90 days after its publication, i. e. at the end of August 2009.

In addition, there was a change of the layout.

The Brief Outline includes the following amendments:

1. The new regulation of trafficking and brokering transactions and transit resulting from the recast.
2. Introduction of new General Licences No. 21 to 23.
3. Update of embargo regulations.

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Objectives of the Brief Outline on Export Controls:

The Brief Outline on Export Controls gives a first orientation on the provisions of German and European export control legislation.

In order to facilitate the understanding of the export control system, the existing prohibitions, in particular embargoes, are described first and then the relevant licences required for exports, transfers and other transactions are explained. In connection with the authorisation requirements for trafficking and brokering transactions, the amendments resulting from the recast of Council Regulation (EC) No. 1334/2000 of 22 June 2000 that was adopted on 05.05.2009 are clarified. In addition there is an outlook on the possible prohibition of transits that is also linked with the recast. This will be followed by an overview of the application and licensing procedures in the Federal Office of Economics and Export Control (BAFA). In conclusion, additional sources of information and materials are provided.

This brief outline explains the main features of export control. It is, however, not legally binding and, therefore, cannot substitute a thorough study of the subject.

A systematic description of foreign trade legislation is contained in the Handbook of German Export Control, HADDEX, (see section L, figure V 3 below) published by BAFA.

Please take note of the following restrictions:

An export/transfer may also require an authorisation pursuant to other laws (e.g. Law on Firearms, Waste Disposal Law, Law on the Supervision of Basic Materials, Pharmaceutical Products Law, Narcotics Law, Regulation of Radiation Protection). Information about the respective licensing authority may be obtained from your competent customs office or the Customs Information Management Centre.

➤ *The Customs Information Management Centre may be contacted at:*

*Carusufer 3-5
01099 Dresden
Fax: 0351/44834-444*

Internet: http://www.zoll.de/h0_wir_ueber_uns/k0_ivm_zoll/kontaktdaten/index.html

A. WHY ARE EXPORT CONTROLS NECESSARY?

Section 1 the Foreign Trade and Payments Act (AWG) bases on the principle of free foreign trade. Pursuant to section 7 AWG, however, restrictions are possible in order to

- guarantee the essential security interests of the Federal Republic of Germany,
- prevent a disturbance of peaceful coexistence between nations or to
- prevent a major disruption of the foreign relations of the Federal Republic of Germany.

Based on this policy, specific prohibitions and licensing requirements are laid down in the Foreign Trade and Payments Regulation (AWV). The provisions make it possible to control in particular the export of weapons and armaments. The Policy Principles of the Federal Government for the Export of War Weapons and other Military Equipment of 19 January 2000 contain a number of criteria and principles permitting to grant licences for the export of such items.

The export control regulations of the European Union (EU) have to be taken into consideration for items which may be used for civil and military purposes (so-called „dual-use“ items). The EC Regulation No. 1334/2000 (hereinafter referred to as „EC REG“) stipulates a harmonised list of items (Annex I to EC REG), licensing requirements and procedures for the export and transfer of dual-use items for all EU Member States. In August 2009 the recast of the EC Regulation is expected to enter into force.

The AWV and the EC REG, particularly its Annexes are subject to regular amendments.

✍ Excerpt of latest amendments of AWV and EC REG are published at BAFA' s web sites at www.ausfuhrkontrolle.info

When deciding on the granting of authorisations for items of Annex I, the Member States have to particularly take into account the following points of view (cf. Article 8 EC REG):

- their obligations and commitments arising from international non-proliferation regimes and export control arrangements of sensitive items;
- their obligations under sanctions imposed by the United Nations Security Council or agreed upon by other international organisations;
- considerations of the national foreign and security policy;
- considerations about intended end-use and the risk of diversion.

In addition, European legal provisions have to be observed in case of goods which could be used for capital punishment or torture (EC regulation No. 1236/2005 "anti-torture regulation"); more details may be derived from the relevant chapter of this information leaflet.

Furthermore, there are embargo provisions which may overlap the aforementioned general foreign trade regulations and create licensing requirements. Embargoes normally base on resolutions of the United Nations, decisions of the OSCE or on common positions of the EU Council. They are basically implemented by EC regulations that are of immediate validity for the companies. In general, embargoes involve prohibitions. The arms embargoes are implemented by national export control provisions.

B. WHEN ARE EXPORTS PROHIBITED?

Certain exports and activities in foreign trade are prohibited. This applies in particular to a number of activities in connection with weapons of mass destruction in accordance with sections 17 and 18 of the War Weapons Control Act (KWKG). The Federal Ministry of Economics and Technology is in charge of the KWKG.

In addition, there are a number of embargoes containing prohibitions and restrictions on foreign trade. The embargoes are imposed on specific countries as well as individual persons and organisations. These are for instance embargo measures to combat terrorism.

I. Restrictions based on embargoes

Depending on the scope of restrictions, there are three types of embargoes: total embargoes, partial embargoes and arms embargoes. Please note that content and scope of the embargoes in force may differ in dependence of the specific country and may involve various restrictions and prohibitions. Taking the scope and objective of the embargo into account, it must always be checked whether the intended action and/or legal transaction is subject to restrictions. Embargo regulations may not only apply to the export of an item, but also to the import and transit of goods, the provision of services as financial transactions.

1. Total embargoes

Total embargoes involve extensive prohibitions on foreign trade, which can only be diminished by certain exceptions (e. g. for humanitarian purposes).

A total embargo against a specific country is presently not in force.

However, the restrictions imposed independently of countries in order to combat international terrorism involve extensive restrictions which are, in fact, the same as a total embargo.

2. Partial embargoes

Partial embargo means that specific restrictions and prohibitions only concern certain branches of the economy and prohibit or restrict certain actions and/or certain legal transactions.

At the time of the publication of this brief outline the following partial embargoes are in force restricting trade with the countries concerned in different ways:

- Belarus
- Côte d' Ivoire (Ivory Coast)
- Democratic Republic of Congo (former Zaire)
- Iran
- Iraq
- Lebanon
- Liberia
- Moldova (travel restrictions)
- Myanmar (former Burma/Birma)
- North Korea (Dem. People's Republic of Korea)
- Sierra Leone
- Somalia
- Sudan
- Uzbekistan
- Zimbabwe

3. Arms embargoes

Arms embargoes contain explicit restrictions and prohibitions of the delivery of weapons, ammunition and other military equipment as defined by Part I Section A of the Export List (AL) as well as paramilitary equipment and the provision of related technical assistance. Based on resolutions taken by international organisations (United Nations, EU, OSCE), no authorisations shall be granted for the export of goods listed in Part I Section A of the AL to the following countries:

- Armenia
- Azerbaijan

- China *)
- Democratic Republic of Congo (former name: Zaire)
- Iran
- Iraq
- Ivory Coast (Côte d' Ivoire)
- Lebanon
- Liberia
- Myanmar (former name: Birma/Burma)
- North Korea
- Rwanda (will be lifted before long)
- Sierra Leone
- Somalia
- Sudan
- Uzbekistan
- Zimbabwe

*Except for the countries marked with an asterisk *) all the above states are subject to embargo under Art. 4 (2) EC REG (see section C, figure I 2a below).*

☞ Topical information about the embargo measures may be found at BAFA's web sites. There is an overview of country-related embargoes and an Information Leaflet on Foreign Trade with embargoed countries that are regularly updated.

II. Measures to combat terrorism

With the Regulations (EC) No. 881/2002 and No. 2580/2001, the European Union adopted restrictive measures to combat terrorism. In accordance with these provisions, it is prohibited to directly or indirectly provide certain persons, entities or organisations mentioned in the lists, that are annexed to the above regulations, with economic resources and financial assets.

The term economic resources includes any type of financial assets, regardless of tangible or intangible, movable or immovable forms, excluding money which, however, may be used for the purchase of money, goods or services. Therefore the direct or indirect delivery of items to persons, entities or organisations mentioned in those lists is prohibited regardless of the country of destination.

Please note that these prohibitions refer to all persons involved in the delivery. It is not enough to check whether the final recipient of the delivery is named in the above-mentioned lists. Likewise it does not play any role whether the goods to be supplied are armaments, dual-use items or goods not controlled by the Export List since the term economic resources is wide and comprises all goods that are not meant for personal consumption or use.

Please note that these regulations are subject to continuous amendments.

☛ *As part of HADDEX (see below) BAFA published a CD-ROM with sanction lists which can be ordered at the Bundesanzeiger Verlag. It contains the names of the relevant persons and organisations and can be fed into the DP-system of the company which is informed by email about list amendments that can be downloaded from the server of the Bundesanzeiger.*

☞ *An Information Leaflet on embargo measures to combat terrorism - which is updated regularly - is published at BAFA's web sites and may be downloaded.*

C. WHEN ARE AUTHORISATIONS REQUIRED?

Authorisation requirements may result from the EC REG, the AWG and AWW. Licences may be required for the export and transfer of goods as well as for trafficking and brokering transactions and the provision of technical assistance. The term "goods/items" includes commodities, technology and data processing programmes.

I. Authorisation requirements for exports to countries outside EU

The term export is defined in Art. 2 b) EC REG referring to the dual-use items controlled and section 4, paragraph 2 no. 4 AWG referring to the national export control provisions.

In simple terms, export means the delivery of goods from the German economic territory or European Community territory to a third country, i. e. a territory situated outside the European Community. This also applies to the posting of technology or software on the internet. Here it makes no difference whether the item is supplied in tangible form or, as in the case of technology or software, in intangible form (e. g transmitted electronically).

The existing authorisation requirements for exports differ as to whether the goods are "listed" or not. The goods are listed when they are controlled by the Export List or by Annex I of EC REG.

1. Authorisation requirement for goods controlled by the Export List (AL)/Annex I of EC REG

Irrespective of embargoes, it must be checked whether the goods to be exported are controlled by Part I of the Export List/Annex I EC REG. In practice, most restrictions result from the list coverage of goods.

Part I of the Export List consists of the following sections:

Section A: List of weapons, ammunition and armaments (items 0001-0022 of AL)

Section C: List of dual-use items;

The list of dual-use items is basically identical with Annex I of EC REG 1334/2000, only extended by national items (900 numbering range, certain industrial goods, as e. g. land vehicles, helicopters or transmitters).

At present Part I Section C of AL or Annex I EC REG, respectively, contains 650 items and contains goods of the following areas:

- Nuclear materials, plant and equipment
- Materials, chemicals, micro-organisms and toxins
- Materials processing
- General electronics
- Computers
- Telecommunications, information security
- Sensors and lasers
- Aviation electronics and navigation
- Oceanographic and naval technology
- Propulsion systems, spacecraft and related equipment

The question whether an item is controlled by the Export List depends on technical criteria.

☞ The content of the Export List, including introductory remarks, definitions and index of headings is published at BAFA's web sites and may be downloaded.

The export of goods controlled by the Export List (AL) /EC REG is subject to authorisation (cf. Article 3 EC REG, section 5 AWW). The licensing requirement applies to exports to all countries outside the Community (including

exports to OECD states, e.g. USA, Switzerland). In case of the **national items of dual-use list (Part I, Section C of AL, 900 numbering range)** a licence is, as a rule, only required for certain countries.

A part of the items listed in Part I Section A - i. e. war weapons - is subject to additional prohibitions and licensing requirements under the War Weapons Control Act (KWKG). Therefore, licences are required, among others, for the production, transportation and marketing of war weapons. The Federal Ministry of Economics and Technology, division VB8, is in charge of granting these licences. In order to avoid, in case of coverage by the Export List and the War Weapons List, that the companies concerned have to apply for two licences BAFA offers the use of a so-called complementary licence.

☞ *Further information may be found in the Leaflet "Information on Complementary Licence" published at BAFA's web sites.*

2. Authorisation requirement for goods not controlled by the AL/Annex I EC REG

The export of items not contained in the Export List/Annex I EC REG may require an authorisation under Article 4 EC REG, sections 5c or 5d AWV if the goods are or may be intended, in their entirety or in part, for sensitive purposes which are detailed below. The structure of these licensing requirements is almost identical.

a) Scope of application of Article 4 EC REG:

Use of items for ABC weapons/ missiles, conventional armaments or components of illegally exported armaments.

Paragraphs 1, 2 and 3 of Art. 4 EC REG provide for the following types of use:

- 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 (cf. Art. 4 paragraph 1 EC-REG);
- A (conventional) military end-use in a purchasing country or country of destination that is subject to an arms embargo imposed by a common decision of EU, OSCE or a by a resolution of the UN Security Council (cf. Art. 4 para. 2 EC REG). The definition of "military end-use" is given in Art. 4 paragraph 2 EC REG. A list of the countries subject to embargo as defined by Art. 4 (2) EC-REG is given above under B.I.3 of this brief outline.

☞ *The current version results from an Announcement of the Federal Ministry of Economics and Technology available at BAFA's web sites.*

- Use as components of military items listed in Section A of the Export List that were exported without authorisation (cf. Art. 4 para. 3 EC-REG);

b) Scope of application of section 5c AWV:

Use of the goods for conventional armaments

The items are or may be intended, in their entirety or in part, for (conventional) military end-use. The definition of "military end-use" is given in sect. 5c para. 1 no. 1 to 3 AWV. This is identical with the definition in Art. 4 para. 2 EC REG.

and

Country of Country List K:

A licence pursuant to section 5c AWV shall only be required if the purchasing country or country of destination is contained in Country List K. At present Country List K includes the following countries:

- Cuba
- Syria.

Section 5c para. 4 AWV stipulates value limit exemptions.

c) Scope of application of sect. 5d AWV:

Use of the items in the nuclear area

The items are or may be intended, in their entirety or in part, for the setting-up, operation of or incorporation into a nuclear plant.

The term “nuclear plant” is defined in Part I Section C category 0 of the AL

and

Specific countries

An authorisation pursuant to section 5d AWV shall only be required if the purchasing country or country of destination is one of the following:

Algeria, India, Iran, Iraq, Israel, Jordan, Libya, North Korea, Pakistan, Syria

Sect. 5d para. 4 AWV stipulates value limit exemptions.

d) Establishment of authorisation requirement

The authorisation requirement under Art. 4 EC REG and under sections 5c, 5d AWV is established by

- an information by BAFA or
- by the exporter's awareness of the above-mentioned conditions.

Information by BAFA:

An authorisation shall be required if the exporter has been informed by BAFA that the items are or may be intended for any of the above-mentioned purposes, in part in connection with the countries mentioned. The exporter will be informed by an individual letter referring to the licensing requirement of a specific export transaction,

Exporter's awareness:

If the exporter is aware that the items are intended for any of the uses referred to above - in part in connection with the countries mentioned - he must inform BAFA accordingly.

This information should be provided on the licence application form. In this case, BAFA will decide whether an authorisation will be required or not.

II. Authorisation requirements for transfers

In order to make a distinction to the rules applying to exports to non-EU countries, trade among the EU Member States is called transfer (cf. Section 4c para. 2 no. 5 AWG).

We have to distinguish between

- authorisation requirements for transfers where the goods remain in the EU
- authorisation requirements for transfers followed by an export to countries outside the EU:

1. Authorisation requirement for items of Part I Section A of AL/Annex IV of EC REG with final destination in EU

The transfer of **armaments** is subject to authorisation just like their export.

However, the transfer of **dual-use items** to other EU Member States is basically free. There are only a few restrictions on Intra-EU trade transactions.

In detail, an authorisation is required for the transfer to another EU Member State of:

- items listed in **Part I Section A** of the AL (weapons, ammunition and military equipment, cf. Section 7 para. 1 AWV); the area of hand-held firearms is subject to specific rules (cf. Section 7 para. 1 sentence 2, nos. 1-3 AWV).
- dual-use items listed in **Annex IV** of EC REG. The goods listed are a sub-group of the items contained in Annex I EC REG (almost identical with Part I Section C) which are considered very sensitive (cf. Art. 21, para. 1 sentence 1 EC REG).

The transfer of goods listed in Part I Section C of AL (where not simultaneously contained in Annex IV of EC REG) as well as the transfer of goods not mentioned in the Export List shall not require a licence if the final destination of the shipment is located within the EU.

2. Authorisation requirement for transfers followed by an export to countries outside EU

The existing authorisation requirements for transfers followed by an export to countries outside the EU also differ as to goods controlled by the Export List and goods not controlled by the Export List.

- Goods of **Part I Section A** of AL are not subject to any peculiarities as compared to transfers described above under figure II 1. The licensing requirement results from section 7, para. 1 AWV.
- For items listed in **Part I Section C** of AL an authorisation is required when the transferor is aware that the final destination is outside the EU (cf. Section 7, para. 2 AWV). This does not apply when a general authorisation or global licence was granted for a direct export, or when the items will be processed in the EU Member State (cf. Section 7 paragraph 5 AWV).

The authorisation under section 7 para. 2 AWV only permits the transfer to another EU Member State and does not cover the subsequent export from that EU state to the final destination country. The subsequent export may be subject to authorisation in the respective EU Member State in accordance with Art. 3 EC REG.

- The transfer of **items not controlled by AL** with subsequent export to a country outside EU requires an authorisation under section 7 para. 3 or 4 AWV if the transferor is aware that the final destination is situated outside the EU and a direct export to that destination would be subject to the provisions of sections 5c, d AWV or Art. 4, para. 2 EC REG.

Section 7 AWV provides for exemptions (particularly value limits) in its paragraphs 5 and 6.

III. Other licensing requirements and controls


1. Trafficking and brokering transactions

In accordance with sections 40 to 42 AWV, trafficking and brokering transactions are subject to authorisation. This includes various ways of arranging or concluding a contract:

- the brokering of a contract on the acquisition or disposal of goods,
- the proof of an opportunity to conclude such a contract, or
- the conclusion of a contract on the disposal of goods.

Authorisations are only required for armaments (Part I Section A of AL) and very sensitive dual-use items under Annex IV of EC REG. The licensing requirement only applies to trafficking and brokering related to goods that are located in a third country, i. e. in a non-EU member state, and are to be exported to another third country.

The term trafficking and brokering transaction is defined in sect. 4c no. 6 AWV.

 An Information Leaflet dealing with this issue may be downloaded from BAFA's websites.

Outlook on the new provisions of the recast EC REG:

In accordance with Art. 5 of the recast EC REG and its entry into force, use-related controls of trafficking and brokering transactions with goods listed in Annex I of the EC Regulation are introduced. In the area of trafficking and brokering transactions the mechanism of information will apply that is comparable to the export authorisation requirements under Art. 4 EC REG, sect. 5c, 5d AWV for non-listed goods (cf. Section C, I.2). A decisive factor will be the use in connection with nuclear, biological or chemical weapons as well as missiles therefore (Art. 4, para. 1 of the recast EC REG).

An authorisation shall only be required if either the resident was informed by the BAFA that the brokering and trafficking transaction is in connection with the above-mentioned uses, or if the BAFA decided, after having been informed by the broker, that an authorisation is necessary in the individual case. These licences apply to all residents and all non-resident German nationals.

2. Technical assistance

Sections 45 to 45 c AWV stipulate information and authorisation requirements in case of the provision of technical assistance.

The definition of "technical assistance" includes any technical service, as repair, maintenance, development, but also transfer of practical skills and knowledge, e.g. by consultation and training. Technical assistance can also be granted in oral or electronic form, by telephone or fax (cf. section 4c no. 7 AWV).

The mechanism of information is also applicable in the area of licensing provisions for technical assistance, comparable to the export authorisation requirements under Art. 4 EC REG, sections 5c, 5d AWV for non-listed items (cf. Section C, fig. I.2).

That means, an authorisation shall only be required if either the resident was informed by the BAFA that the technical assistance is intended for use in connection with certain items in the above-mentioned countries, or if the BAFA, after having been informed by the exporter, decided that an authorisation is required in that individual case. These authorisation requirements apply to all residents and all Germans, i. e. also non-resident Germans.

On this basis, sections 45 to 45 c AWV stipulate the following information and licensing requirements:

- Technical assistance provided **outside Community territory** in connection with weapons of mass destruction and missiles (cf. Section 45 AWV). The technical assistance in a country under Annex II Part 3 of EC REG is exempt from this.
- Technical assistance that is provided **outside Community territory**, but in a **country subject to embargo** (cf. Art. 4 para. 2 EC REG) or in a country of List K and that is in connection with a military end-use (cf. Section 45a AWV).
- Technical assistance provided **within the Community territory** in connection with weapons of mass destruction and missile technology (cf. Section 45 b para. 1 AWV). Exempt from this is the provision to non-residents established in a country of Annex II Part 3 EC REG or an EU Member State. Controls only apply to technical assistance provided in oral, written and electronic form, by telephone or fax.
- Technical assistance that is provided **within the Community territory** to a non-resident who is established in a country subject to embargo or in a country of List K and that is in connection with a military end-use (cf. Section 45b para. 2 AWV).
In this case, too, controls only apply to technical assistance provided in oral, written, electronic form, or by telephone or fax.
- Technical assistance **regardless of where** it is provided, if it is in connection with the setting-up or operation of a plant for nuclear purposes as defined by section 5d paragraph 1 AWV in the countries: Algeria, India, Iran, Iraq, Israel, Jordan, Libya, North Korea, Pakistan or Syria (cf. Section 45c AWV).

The transmission of information that is “in the public domain” or is a part of basic scientific research is exempt from the authorisation requirement. In addition, section 45 e AWW enumerates other cases not subject to licensing.

☞ *BAFA publishes an Information Leaflet on licensing requirements in case of technical assistance (Responsibility and Risks of Know-How Transfer") on its web sites which may be downloaded.*

3. Transit

Outlook on the new provisions of the recast EC REG:

With Art. 6 of the recast EC REG a new provision will be introduced, making it possible to control the transit through the European Union. Transit means a transport of goods entering and passing through the Community territory with a destination outside the Community. The prohibition will only apply to dual-use items of Annex I EC REG that are not imported into the customs territory of the Community and not released for free circulation (non-Community goods).

The transit of dual-use items will only be prohibited if they are intended for use in connection with nuclear, biological or chemical weapons and missiles (as defined by Art. 4, para. 1 of recast EC REG). An extensive authorisation requirement for the transit of dual-use items through the European Union is presently not planned.

D. WHAT TYPES OF AUTHORISATIONS EXIST?

I. Individual Export Licences/Maximum Amount Licences

The basic type of export/transfer licence is the individual licence. It permits the shipment of one or several items to one consignee, based on one order.

A „maximum amount licence“, being a special type of individual licence, may be issued. This authorisation permits the shipment to one consignee up to the authorised „maximum amount“ (expected annual sales) on the basis of several orders, e.g. in connection with a general contract.

II. Collective Export Licences

Given certain conditions, it is possible for certain exporters to apply for a collective export licence (SAG) instead of applying for several individual licences. The SAG is a privileged procedure for reliable exporters with a high number of foreign trade transactions. This licence permits the export of a group of items to several consignees.

☞ *An Information Leaflet on the Collective Export Licence is available at BAFA or may be downloaded from its web sites.*

III. General Licences

An individual licence cannot be issued if a general licence was already granted for a given export.

The General Licences of BAFA are published in the Federal Gazette.

The exporter/transferor does not need to apply for their utilization, but must register as the user. This also applies to the Community General Export Authorisation EU001 published as Annex II to EC REG and which was provided with additional collateral clauses by BAFA that are published in the Federal Gazette.

Each General Licence is only valid for the specified items and countries (as laid down in nos. 4 or 5 of the General Licences).

General Licences for dual-use items may also be used if the items are not located on the German economic territory but in another EU Member State.

Export Controls

The use of all General Licences (except General Licence No. 18) has to be notified to BAFA prior to the first export/transfer or afterwards within a period of 30 days.

☞ An Information Leaflet on General Licences containing the required specimen for registration and the reporting procedure is available at BAFA's web sites and may be downloaded.

At the time of publication there are the following General Licences (restricted on specific groups of items and countries):

Community General Export Authorisation No. EU001

The General Export Authorisation of the Community No. EU001 permits the export of all items of Annex I EC REG to definite countries. The items listed in Annex IV EC REG and some other items listed in Annex II Part 2 EC REG are exempt from this.

This General Authorisation is valid for the countries mentioned in Annex II Part 3 EC REG:

Australia, Canada, Japan, New Zealand, Norway, Switzerland and United States of America.

Some conditions and requirements are contained in Annex II EC REG. Furthermore, some national collateral clauses referring to the use of the General Authorisation were adopted. They were published in the Federal Gazette and require reporting procedures in some cases.

Where an export falls within the scope of application of CGEA No. EU001, it shall be used in any case. It is not permissible to use another General Licence or an individual licence.

General Licence No. 9

General Licence No. 9 permits the export of certain **graphites** defined in AL item 0C004 .

General Licence No. 10

The General Licence No. 10 permits the export of certain **computers and related equipment**.

General Licence No. 12

The General Licence for the export of dual-use items below a **specific value limit** (WGG) permits the export of items listed in Annex I EC REG (Note list of exceptions!) and is valid for exports not exceeding a value of €5,000 from the entire Community territory.

General Licence No. 13

General Licence No. 13 applies to licensing requirements under Article 3 of EC REG **in exactly defined groups of cases**.

Note: Sect. 19 AWV (i. c. w. sect. 21 AWV) may exempt from the duty to apply for a licence in different groups of cases. However, the exemptions only apply to exports/transfers that are subject to authorisation under the AWV provisions.

General Licence No. 16

General Licence No. 16 permits the export of certain items from the area of **telecommunications and information security**.

General Licence No. 18

General Licence No. 18 permits the export/transfer of **clothing and equipment with signature suppression** (AL item 0017h of Part I Section A).

General Licence No. 19

General Licence No. 19 permits the export/transfer of **all-terrain vehicles** (AL item 0006b of Part I Section A) to specific countries.

General Licence No. 20

The General Licence No. 20 is valid for **trafficking and brokering transactions** that are subject to licensing under sect. 40 para. 1 AWV.

General Licence No. 21

The General Licence No. 21 permits the export and transfer of **protection and decontamination equipment** as well as of equipment and bio polymers to detect and identify certain materials (AL items 007f to 007h and 0013).

General Licence No. 22

The General Licence No. 22 permits the transfer of **explosives** listed in AL item 0008 of Part I Section A.

General Licence No. 23

The General Licence No. 23 permits the re-export of goods listed in Part I Section A in certain cases.

The general licences may only be used for the export or transfer of goods if all collateral clauses, licensing provisions and prohibitions are observed in the individual case. The latter does not only include the embargoes in force, but also regulations or the order to apply restrictive measures to combat terrorism (cf. Section B) as well as all other prohibitions to be observed in the individual case.

☞ You can look into and download the General Licences at BAFA's web sites.

IV. Collateral clauses

Export and transfer licences may be provided with collateral clauses in accordance with Art. 6 para. 2 EC REG or sect. 30 para. 1 AWG i. c. w. sect. 36 Administrative Procedures Act. Collateral clauses are e. g. time limitation, conditions, proviso of cancellation, requirements or requirement reservations. They are issued to adapt the licence to the requirements of the individual case. In many cases, they create the pre-requisite for the granting of an export or transfer licence.

All licences are granted for a limited period of time. That means that the licence may only be used within a certain period of time.

The catalogue is not final.

E. WHAT IS SUBJECT TO THE JURISDICTION OF BAFA IN THE AREA OF EXPORT CONTROL?

BAFA's responsibility is mainly determined by two criteria, i. e. what is the legal basis for granting the licence and whether the item is located on the German economic territory. Where the licensing requirement bases on Art. 21 EC REG or the provisions of AWV, BAFA is the competent authority for the granting of the licence provided that the item to be delivered is located on the German economic territory (so-called situs principle).

Where the authorisation requirement is based on Art. 3 and 4 EC REG, BAFA is responsible for the granting of the licence only if the exporter is established in Germany. The exporter is considered to be resident of that Member State where his head office is established (principle of establishment, cf. Art. 6 para. 2 EC REG). In case of exports subject to authorisation under Art. 3, 4 EC REG, the export licence application should also be submitted to BAFA when the item to be exported is located in another EU Member State.

F. HOW TO APPLY FOR AN INDIVIDUAL EXPORT LICENCE?

I. Application form

If you come to the conclusion, after reviewing your case, that your intended export is subject to licensing you have to file a formal application for an export/transfer licence to BAFA. Specific application forms AG, AG/W, AG/E1 and AG/E2 are required for this purpose. They are available from special form publishers (see Section L, fig. VI) and most of the Chambers of Industry and Commerce. The application must be filed in "EURO". The forms presently valid reflect the status of 01.01.2001.

☛ *Detailed instructions on how to complete these forms are available at BAFA's web sites and may be downloaded.*

II. Electronic application (ELAN)

The name ELAN indicates the possibility to apply electronically for export/transfer licences at BAFA. The access is possible via a link on BAFA's website ("online application forms").

☞ <http://www.ausfuhrkontrolle.info/ausfuhrkontrolle/de/antragstellung/index.html>

After the successful electronic transmission of application data to BAFA the application form can be printed out. Presently it is still necessary to sign the application and send it to BAFA together with the required documents. The prior electronic registration at BAFA's Homepage is necessary for using ELAN.

For registration, please turn to "online application forms", select the form "application for export licence" and follow the link "register here" on the opening page. You will be informed by email when the access is free.

☞ *Further information about ELAN is contained in the Information Leaflet Electronic Applications that is posted on BAFA's web sites.*

III. Customs number

The customs number ("DE" plus 7-digit number for the exporter's address) must be entered by the exporter /transferor on the application form. If no customs number has been assigned yet it may be obtained from the Customs Information Management Centre. The required application form is also available there.

☞ http://www.zoll.de/b0_zoll_und_steuern/a0_zoelle/a1_grundalge_zollrecht/e0_azr_zollnummer/index.html

It is also possible to file an application if the exporter has no customs number yet. In this case, BAFA will apply for it at the Customs Information Management Centre.

IV. Nomination of a person responsible for exports

Export transactions normally require the nomination of a person responsible for exports to BAFA. He/she is personally responsible for the compliance with the export control regulations and must be a member of the board of directors or executive management.

The legal basis are the "Principles of the Federal Government to check the reliability of exporters" of 10.08.2001.

☞ *The principles may be looked at and downloaded from BAFA's web sites.*

Export Controls

A person responsible for exports shall be nominated in case of the following applications for export/transfer licences:

- Export and transfer of items specified in Part I, Section A of the Export List (AL), including items subject to the War Weapons List;
- Export of items specified in Annex I of EC REG except exports to countries listed in Annex II Part 3 EC REG (cf. section C above);
- Export of items specified in Part I Section C of the Export List (AL) except exports to countries listed in Annex II Part 3 EC-REG.

For details see the Announcements referring to the "Principles of the Federal Government on checking the reliability of exporters of war weapons and armaments" of 25 July 2001, FG No. 148 of 10.8.2001, p. 17177 and FG No. 149 of 11.8.2001, p. 17281 as well as the explanatory announcements of BAFA in FG No. 149 of 11.8.2001, p. 17281 and 17295.

☞ *These announcements are also published at BAFA's web sites and may be downloaded.*

The forms are available at BAFA's web sites (www.ausfuhrkontrolle.info) under "Antragstellung". Please complete Form AV1 to nominate the person responsible for exports and submit it with an excerpt from the commercial register. Form AV2 is to be completed for the acceptance of responsibilities by the person responsible for exports and to be renewed annually.

V. End-Use Documents

In case of the export/transfer of listed items subject to authorisation an End-Use-Certificate must be enclosed with the application (cf. section 17 AWV). The submission of end-use documents is normally not required for temporary exports only or if the export value is below certain limits;

End-Use Certificates are distinguished as to private and official (EUC) as well as governmental end-use certificates (International Import Certificates - IC).

☞ *For details on End-Use Certificates see BAFA's Announcement on section 17 (2) AWV of 12.02.2002. This announcement is also published at BAFA's web sites and may be downloaded.*

1. Private End-Use Certificate (EUC)

A private EUC contains statements by consignee or end-user, being subject to private law, referring to the final destination and use of the items. The content of EUC may vary as to country of destination, consignee, end-user and type of items. The EUC must correspond with the standard text given by BAFA and contain the consignee's letterhead.

☞ *See the specimen in the above-mentioned BAFA Announcement on section 17 (2) AWV of 12.02.2002. This announcement and the specimen are also published at BAFA's web sites and may be downloaded.*

2. Official End-Use Certificate (EUC)

Official End-Use Certificates are required if the exported items are to be delivered to a governmental end-user, i. e. the purchaser (or at least, indirect purchaser) is the recipient state. An official end-use certificate is also a private statement confirmed by a government authority.

3. International Import Certificate (IC)

ICs are issued by the recipient country or an authorised office; as a rule, the content of the statement is more restricted than in official EUC. The IC contains the official declaration of the recipient country that it took note of the intended import of items and that a possible subsequent re-export will be monitored in accordance with its export control regulations.

Such ICs are mainly issued by the following countries: Australia, Austria, Belgium, Canada, China (“Importer Statement on End-User and End-Use”), Czech Republic, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Singapore, Slovak Republic, Spain, Special Administrative Region of Hong Kong, Sweden, Switzerland, Turkey, United Kingdom and United States of America.

VI. Technical documents

Please enclose all the necessary (technical) documents with the application, e.g. brochures and data sheets permitting a technical assessment of the export items on the basis of the Export List. Please note that the items must be exactly described; producer and type of the items have to be indicated.

Further hints on applications may be taken from the checklist for optimized application filing on BAFA's websites.

G. HOW LONG DOES THE LICENSING PROCEDURE TAKE?

The licensing procedure for exports/transfers of goods to non-sensitive countries takes about two weeks. In case of exports to other countries the processing takes about one month. The processing time of applications for exports to sensitive countries (e.g. Country List K or countries subject to embargo) and of sensitive cases may exceed one month. In these cases more thorough inquiries and, if necessary, the participation of the competent federal ministries are required.

For a speedy processing it is essential to submit completely and correctly filled applications and to enclose all the necessary documents. In particular, the intended end-use by the consignee must be as detailed as possible.

H. WHAT IS A PRODUCT-RELATED ADVICE ON THE LIST OF GOODS (AZG)?

The advice on the list of goods (former Negative Certificate) is to prove to the customs authorities that certain items are not covered by the Export List. The need for such a proof arises when the item of the Commodity Classification of Foreign Trade Statistics is provided with the note “aus” (see “Correlation List, Section L fig. V2). The advice on the list of goods does not state that an export is basically exempt from licensing.

The relevant application must be filed on a special form that is available from form publishers and many Chambers of Industry and Commerce. Two copies of data sheets and brochures providing detailed information on the items have to be enclosed with the application.

The AzG may also be filed electronically via ELAN.

I. WHAT IS A BLANK NOTICE?

If the review of an export/transfer licence application results in the fact that no authorisation is required for the export, the BAFA issues a so-called „Blank“ Notice. The „Blank“ Notice only applies to a definite export/transfer transaction for which the application was filed and is not transferable.

J. WHAT IS THE CHEMICAL WEAPONS CONVENTION?

The Chemical Weapons Convention (CWC) is a treaty aiming at disarmament and arms control; it is directed on the prohibition of chemical weapons and the destruction of existing chemical weapons on a world-wide scale. It contains extensive mechanisms of control for the chemical industry and related industries, their purchasers and traders with chemicals.

The Act Implementing the CWC and the Implementing Regulation stipulate in detail the duties of the companies, especially authorisation and declaration requirements.

☞ Comprehensive Information on CWC may be found at BAFA's web sites and at www.opcw.org.

K. WHAT IS THE ANTI-TORTURE REGULATION?

The Regulation (EC) No. 1236/2005 - the "Anti-torture regulation" - contains prohibitions and licensing requirements for foreign trade with certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. It contains two lists of goods in its Annexes II and III:

- Annex II contains goods that are of no practical use, except for capital punishment, torture or other cruel or degrading treatment. Third-country trade with those goods, in particular their export and import as well as the provision of technical assistance related to those items is prohibited. There are exceptions for museums.
- Annex III contains goods that may be used, apart from legitimate purposes, also for the purpose of torture or other cruel, inhuman or degrading treatment. Since a legitimate use of these goods cannot be excluded, the export of those items is subject to authorisation.

☞ The EC EG 1236/2005 and an Information Leaflet on this issue may be consulted and downloaded from BAFA's Homepage.

L. WHERE ARE ADDITIONAL INFORMATION AND IMPORTANT WORKING DOCUMENTS AVAILABLE?

I. Contact by telephone, fax or e-mail

The staff of the BAFA is always prepared to provide information. You can contact BAFA at

Federal Office of Economics and Export Control
Frankfurter Str. 29-35, 65760 Eschborn or
PO Box: 5160, 65726 Eschborn
Telephone: 06196/908-0
Fax: 06196/908-800.

☞ If you have specific questions you can also use the contact form at BAFA's web sites under "Kontakt".

II. BAFA's Homepage

The Federal Office of Economics and Export Control provides topical information and important laws in the Internet at <http://www.ausfuhrkontrolle.info> This does not only include charts on the structure and tasks of BAFA but also important regulations, documents and announcements of foreign trade and payments, like e.g. EC Dual-

Use Regulation, extracts from AWG and AWV, the Export List (AL), the Correlation List, General Licences, legal instruments and decisions adopted by EC and UN, and Information Leaflets.

III. Internet addresses

The Official Journal of the EC is also posted on the Internet at: <http://eur-lex.europa.eu/en/index.htm>

Resolutions and decisions of the UN Security Council are available at: <http://www.un.org/Docs/sc>

The table of contents of the Federal Gazette is published at: www.bundesanzeiger.de as well as excerpts from the legal texts published in the Federal Law Gazette from 1998 that are free of charge.

Contributions to export control issues and embargo measures by the Federal Ministry of Economics and Technology are published at:

<http://www.bmwi.de/BMWi/Navigation/Aussenwirtschaft/aussenwirtschaftsrecht.html>

The following international regimes deal with export control:

- In the field of armaments the "Wassenaar Arrangement" (<http://www.wassenaar.org>)
- In the field of missile technology the "Missile Technology Control Regime" - MTCR - (www.mtcr.info)
- In the field of chemical and biological weapons the "Australia Group" (<http://www.australiagroup.net>)
- In the field of goods that can be used for the development and production of nuclear weapons the "Nuclear Suppliers Group" (<http://www.nuclearsuppliersgroup.org>)

BAFA is not competent for US export control legislation. The Bureau of Industry and Security (BIS) has published comprehensive information in the Internet at: <http://www.bis.doc.gov>.

IV. Processing status enquiries via ELAN

The mailbox system "ELAN-Sachstandsabfrage" makes it possible for the companies to enquire for the processing status of their licence applications. For this purpose, they only have to register for BAFA's Online service ELAN.

For registration see section F. fig. II above. After successful registration you have access to the login page via the button "Benutzerdaten ändern/verwalten" and then click on the line "Sachstandsanzeige".

V. Information Leaflets / Working Documents / HADDEX

1. Information Leaflets/ BAFA's publications

BAFA has published a number of Information Leaflets, giving more detailed explanation about relevant areas of foreign trade legislation.

Reference to these leaflets was already made in the different sections.

- ✦ *The Information Leaflets and publications may be looked at and downloaded from BAFA's Homepage at <http://www.ausfuhrkontrolle.info/ausfuhrkontrolle/de/arbeitshilfen/index.html>*

In case of questions or remarks referring to the content and design of our Homepage or the above Information Leaflets, please contact the division of press and public relations, Tel.: 06196/908-452, Fax: 06196/908-496,

Email: pressestelle@bafa.bund.de

2. Correlation List

The Correlation List (list of indicators) shows whether and which items of the Commodity Classification for Foreign Trade Statistics may be subject to control under the Export List. A detailed explanation on the handling of the Correlation List is contained in the preface to the announcement referring to the revised Correlation List.

☞ The Correlation List with its Preface is published at BAFA's web sites and may be downloaded.

3. HADDEX

The Handbook of German Export Control - HADDEX - published by BAFA contains in volume 1 the existing prohibitions and licensing requirements, licensing procedures and simplified procedures. Volumes 2, 3 and 4 contain the most important documents (AWG, AWV, Export List, Correlation List, Announcements, Forms and specimen). All volumes are regularly revised and updated. The loose-leaf type of publication including the provision of relevant supplements and express information service ensure that the reader is always informed about the current legal situation in the case of amendments and additions.

The handbook may be obtained from the Bundesanzeiger Verlagsgesellschaft.

You can also order the CD-ROM Sanctions Lists from the Bundesanzeiger Verlagsgesellschaft. The subscriber is informed by email about amendments which can be downloaded by the help of an access code from the server of the Bundesanzeiger.

☞ Questions and suggestions referring to this handbook are welcome and may be submitted by email to haddex@bafa.bund.de

The current text of AWG, AWV, Export List and Correlation List may be ordered from

Bundesanzeiger Verlagsgesellschaft mbH,

Tel.: 0221/97668-0, Fax: 0221/97668-115.

Legal amendments, but also announcements of BAFA are contained in the "Bundesanzeiger", an official paper published on working days.

4. "Export Control in Practice"

Information and valuable advice referring to the practical implementation of export control in the company are contained in a new publication issued by BAFA "Export Control in Practice" that is also published by the Bundesanzeiger Verlag and may be ordered there.

VI. Application forms

BAFA provides the export licence application form and all the required form sheets free of charge via the online service ELAN. The respective application may be found at BAFA's Homepage at "Antragstellung" und "Ausfuhrantrag". After the necessary registration you get access to the forms. The online procedure is especially made for inexperienced users, as instructions on how to complete the form are added and it is checked whether the data are complete.

The set of application forms AG „Application for Export/Transfer Licence“ and supplementary sheets may be obtained from the following publishers:

- Formularverlag CW Niemeyer, Walter-von-Selve-Str. 6, 31789 Hameln, Tel: 05151/98930, Fax: 05151/989393 Email: info@formularverlag.de, URL: www.formularverlag.de;
- Purschke und Hensel, Kanalstr. 7, 12357 Berlin, Tel: 030/6609010 Fax: 030/66090111; URL: www.purschke-hensel.de ;
- Verlagsgruppe Hüthing - Jehle - Rehm, Einsteinstr. 172, 81675 München, Tel: 089/ 2183-7928, Fax 089/41979-144, Email: info@hjr-verlag.de , URL: www.Jehle-Rehm.de;
- Wilhelm Köhler Verlag, Postfach 1261, 32372 Minden, Tel: 0571/82823-0, Fax 0571/8282323, Email: info@koehler-verlag.de, URL: www.koehler-verlag.de;