

Fundamentals of control of trade in dual-use goods in the European Union: a summary of the requirements implemented by UAB/JSC Altechna

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„On internal compliance programmes for dual-use trade controls“ [1])

1. With this summary, we (UAB/JSC „Altechna“, hereinafter – the Company) inform you that since 1st of May, 2004, the Republic of Lithuania became a member of the European Union (hereinafter - EU), EU legal acts (regulations) are in force in the Republic of Lithuania and are defining the directly applicable rules for the export of goods from the customs territory of the EU to the third countries, established as the integral element of the EU's common commercial policy.
2. We kindly draw your attention to the fact that Regulation No. 821/2021 of the Council of the EU [2] establishes the export control regime for Union's dual-use items (products) and technologies. Annex I of the Regulation contains a list of dual-use objects, while Annex IV contains lists of sensitive and highly sensitive dual-use objects. These lists include all dual-use items controlled based on applicable international export control regimes. The lists of dual-use objects set out in Annex I and Annex IV of the Regulation are updated following the relevant duties and obligations and their changes which the Republic of Lithuania, as a party to international non-proliferation regimes, export control agreements, and other relevant international agreements, has assumed to follow. The Regulation establishes that all EU Member-States must control the export of dual-use items listed in Annex I and the internal transfer of items listed in Annex IV within the European Union
3. It should be emphasized that the above-mentioned EU Regulation No. 821/2021 allows EU Member-States to apply stricter requirements for the control of dual-use objects and military equipment. Accordingly, these requirements for the control of military equipment in the Republic of Lithuania are stipulated by the order of the Minister of National Defense of the Republic of Lithuania adopted on the 27th of September, 2022, No. V-720 "On Approval of the General List of Military Equipment". According to its requirements, the Republic of Lithuania is applying (i) a national list of military equipment and (ii) compulsory requirements to obtain licenses for the export, import, and transit of military equipment.
4. According to these, above-mentioned legal acts, export control in the Republic of Lithuania is established and applicable both to goods (products, items) that have a dual purpose (can be used and adapted for both civilian and military purposes) or are exclusively designed for military use (developed specifically for military use only).
5. It should be noted that according to applicable national and EU export control requirements, **dual-use goods, which has a dual-purpose use, are defined as products (items) that are or may be used for the following purposes:**
 - (i) *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;*
 - (ii) *for a military end-use if the purchasing country or country of destination is subject to an arms embargo (for the purposes of this point, 'military end-use' means: incorporation into military items listed in the military list of member states of European Union; use of production, test or analytical equipment and components therefor, for the*

development, production or maintenance of military items listed in the military list of member states of European Union; or use of any unfinished products in a plant for the production of military items listed in the military list of member states of European Union);

- (iii) *as parts or components of military items listed in the national military list that have been exported from the territory of a member states of European Union without authorization or in violation of an authorization prescribed by the national legislation of that member states of European Union (or otherwise as specified in consolidated and in force version of the Part 1 Article 4 of the Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items).*
6. EU Regulation No. 821/2021 establishes that while exporting dual-use and military-purpose goods (except for the goods listed in Annex II of the Regulation and supplied under the Union general export authorizations system), separately acquired export licenses as well as permits to transport (supply) these goods within the EU may be required and these are granted by the competent national authority - the Ministry of Economy and Innovations of the Republic of Lithuania.
 7. Article 8 of the EU Regulation No. 821/2021 provides that when deciding whether to issue an export permit or other permit under this Regulation, the competent authority of the Member-State shall consider all relevant circumstances, including:
 - duties and obligations that each state has undertaken as a party to relevant international non-proliferation regimes and export control agreements or by ratifying relevant international treaties;
 - duties which must be implemented according to the sanctions regime set according to the common position or joint action adopted by the Council of the EU or according to the decision of the Organization of the Security and Cooperation in Europe (OSCE) or based on the binding resolution of the United Nations Security Council;
 - national foreign and security policy circumstances, including those covered by the EU's Code of Conduct on Arms Exports;
 - the circumstances related to the intended end-use of the transferred products and the risk of their reshipment.
 8. Taking into account these circumstances, Regulation No. 821/2021 obliges EU exporters to collect documents and data about exported dual-use goods and store them for at least three years. The Regulation also establishes a requirement that where an exporter is aware that products, which he proposes to export, not listed in Annex I of the Regulation as dual-use items, are intended, in their entirety or in part, for any of the uses referred to in paragraph 5 of this Summary, the exporter must notify the competent authority about such circumstances.
 9. We would like to draw your attention, that the trade in certain goods (products, items) and their export to the third countries, non-Member States of the EU, can be additionally restricted based on the trade sanctions, applicable in the EU, which the Altechna is also obliged to implement and follow.
 10. To comply with the enforceable EU's sanctions regime, we kindly ask our customers to check whether the products (goods, items) which you are ordering from us will not be delivered to such third countries in violation of established restrictions according to the official information available in the EU "Sanctions Map" [3], the website of European Commission's Directorate-

General for Trade (DG TRADE) [4] and the EU's TARIC database [5] (see the references below).

11. We also inform that the Criminal Code and Code of the Administrative Offenses of the Republic of Lithuania set the rules for the application of criminal or administrative liability for persons involved in smuggling or other forms of illegal transfer of dual-use goods, including transporting them across the state border of the Republic of Lithuania without submitting to customs control or otherwise avoiding this control or transporting them without a license.
12. **According to the above-mentioned requirements, the company (UAB "Altechna") reserves the right to ask the purchasers of its products/items any additional information related to the circumstances of the end-use of the products/items which:**
 - (i) is necessary for the risk assessment of compliance of the executed order with the requirements of Regulation (EU) 2021/821 and
 - (ii) is specified in the recommendations of the EU Commission related to the implementation of the Regulation (EU) 2021/821, namely, Annex 2 of the Commission Recommendation (EU) 2019/1318 of 30 July 2019 on internal compliance programmes for dual-use trade controls, and Annex 3 of the Commission Recommendation (EU) 2021/1700 of 15 September 2021 on internal compliance programmes for controls of research involving dual-use items [6].

We kindly inform you that failure to provide the exact above-mentioned information may lead to postponement of the delivery of products in question or cancelling of the purchase order executed by the Company.

REFERENCES:

[1] Commission Recommendation (EU) 2019/1318 of 30 July 2019 on internal compliance programmes for dual-use trade controls, C/2019/5528; OJ L 205, 5.8.2019. < <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019H1318> >;

[2] Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast); OJ L 206 11.6.2021, p. 1. < <https://eur-lex.europa.eu/eli/reg/2021/821> >;

[3] See: <https://www.sanctionsmap.eu>;

[4] See: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions_en;

[5] See: https://ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en;

[6] Commission Recommendation (EU) 2021/1700 of 15 September 2021 on internal compliance programmes for controls of research involving dual-use items under Regulation (EU) 2021/821 of the European Parliament and of the Council setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items, C/2021/6636; OJ L 338, 23.9.2021. < <https://eur-lex.europa.eu/eli/reco/2021/1700/oj> >.