

## Article 4

### Article 4

1. An authorisation shall be required for the export of dual-use items not listed in Annex I if the exporter **has been informed** by the competent authorities of the Member State in which he is established that the items in question are or may be intended, in their entirety or in part, 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.

#### **Comment:**

This paragraph authorises Member States' licensing authorities to require, through a notification to exporters, an export authorisation for an item **not listed in Annex I** of this Regulation. The mechanism of notification differs from one Member State to another. It varies from a general information note published in the national Official Journal of a Member State, to topical letters to concerned exporters (**Bulgaria, Croatia, Estonia, Finland, France, Greece, Italy, Latvia, Luxembourg, Slovakia, Slovenia, Sweden and Spain**).

**Belgium (Walloon Region)** and **Poland** inform through individual and collective notification.

In **Bulgaria**, the Ministry of Economy, as a competent authority, supports and update regularly the dedicated website with all need information and European and national legislation for help the companies which are trading with dual-use items and technology.

In **Hungary**, there is a dedicated newsletter informing the exporters of the nature of the catch-all clause, which includes general description of circumstances that might trigger the catch-all clause.

In **Ireland**, individual exporters are notified on a case-by-case basis.

In the **Flemish Region**, notification in the sense of Article 4 is typically done to the concerned exporter via registered mail, informing the exporter and giving a motivation for the imposed authorisation requirement. This is not a legal requirement. The exporter needs to be merely informed by the authority; in essence an e-mail or even a telephone call would suffice from a legal point of view. The licensing authority also notifies the Customs authorities of any catch-all authorisation requirement imposed.

In **Cyprus**, it depends on the case: if the decision concerns specific exporters, only these will be notified.

In **Czech Republic**, if the catch-all measure concerns one exporter, it is informed individually by letter from the Licensing Administration of the Ministry of Industry and Trade, the information is not public. In case the measure applies to more exporters where their number cannot be precisely defined, this is published on the public website of the Ministry.

In **Romania**, the notification of catch-all clause is published in the National Gazette by the National Authority, while the concerned exporter and other authorities (customs, services) are notified as well.

2. An authorisation shall also be required for the export of dual-use items not listed in Annex I if the purchasing country or country of destination is subject to an **arms embargo imposed by a decision or a common position** adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe (OSCE) or to an arms embargo imposed by a binding

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resolution of the Security Council of the United Nations and if the exporter has been informed by the authorities referred to in paragraph 1 that the items in question are or may be intended, in their entirety or **in part**, for a military end-use. For the purposes of this paragraph, “**military end-use**” shall mean:

### Comment:

This paragraph requires Member States’ authorities to impose, through a notification to the exporters, an export authorisation for items not listed in Annex I, when the final destination or the purchasing country is subject to an arms embargo decided by:

- The EU Council of Ministers;
- The OSCE;
- The Security Council of the United Nations.

Presently, the list of countries under arms embargo includes: Afghanistan, Belarus, Central African Republic, China, Democratic Republic of Congo, Iran, Iraq, Lebanon, Libya, Myanmar (Burma), North Korea, Russia, Somalia, South Sudan, Sudan, Syria, Venezuela, Yemen, Zimbabwe.<sup>36</sup>

It shall be recalled that an export authorisation requested by Article 4(2) is submitted to the following conditions:

- The end-user has to be established in a country subject to arms embargo as listed above;
- The items should or might be used for a military end use;
- The exporter has been informed, by the national authorities, of the necessity to obtain an authorisation for such transaction.

(a) **incorporation** into military items listed in the military list of Member States;

### Comment: “military items”

In June 2000, Member States have reached an agreement on a Common list of military equipment covered by the EU Code of Conduct on Arms Exports. This list has been regularly updated and the latest version has been adopted by the Council on 17 February 2020

(equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment) (updating and replacing the Common Military List of the European Union adopted by the Council on 18 February 2019 (OJ C 85/1, 13/03/2020)<sup>37</sup>. This list is considered as the reference, by certain Members States, when implementing Article 4(2).

(b) use of production, test or analytical **equipment** and components therefor, **for** the development, production or maintenance of military items listed in the abovementioned list;

### Comment:

The wording “**equipment ... for**” should be interpreted as covering only items making a **functional contribution** to the development, production or maintenance of military items. This paragraph does not affect items that have no essential influence on the respective

<sup>36</sup> The list of destinations submitted to arms embargo is available at: <https://www.sanctionsmap.eu/#/main>.

<sup>37</sup> The latest version of the EU Military List is available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XG0313\(07\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XG0313(07)).

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process, notably items with a wide range of applications, *e.g.* consumer goods (lubricants and auxiliary agents for maintaining operability, tools with use-related fast wear and tear) or electric wiring material.

(c) use of any unfinished products in a **plant** for the production of military items listed in the abovementioned list.

### Comment:

The term “**plant**”, used in this provision and in Annex I, should be interpreted as production facilities serving, in their entirety or in part, the production of military items. Plants could include a number of facilities, machines, and equipment forming a unity.

In order to be covered by the present catch-all clause, it is enough that an entire plant partially produces military items. This will also apply if only one part of these (primary) products is used for the final production of military items.

3. An authorisation shall also be required for the export of dual-use items not listed in Annex I if the exporter **has been informed** by the authorities referred to in paragraph 1 that the items in question are or may be intended, in their entirety or in part, **for use as parts or components** of military items listed in the national military list that **have been exported from the territory** of that Member State **without authorisation or in violation** of an authorisation prescribed by national legislation of that Member State.

### Comment:

The notion of “**being informed**” is not defined by this Regulation. Nevertheless, some Member States give their own understanding of this concept as concerns brokering services of dual-use items listed in Annex I (see comment relative to Article 5(1) of this Regulation).

4. If an exporter is **aware** that dual-use items which he proposes to export, not listed in Annex I, are intended, in their entirety or in part, for any of the uses referred to in paragraphs 1, 2 and 3, he must notify the authorities referred to in paragraph 1, which will decide whether or not it is expedient to make the export concerned subject to authorisation.

### Comment:

This paragraph establishes an obligation for an exporter to **notify** to his national authorities if he/she is aware that the dual-use item not listed in Annex I, he/she intends to export will contribute to the elaboration of weapons of mass destruction or military items listed in the EU Military List. Conversely to the provisions of the first three paragraphs of Article 4, the **responsibility to estimate the possible diversion lies with the exporter**. After being informed, the national authorities might decide to submit such export to authorisation.

If an exporter, intentionally or by negligence, omits to inform the national authorities, his/her responsibility could be engaged and administrative and/or criminal penalties could be applied. To engage the exporter’s responsibility, the authorities will have to prove, on one hand, that the end-user was involved in a WMD programme and, on the other hand, that the exporter was aware of these facts.

The term “**being aware**” is not formally defined by this Regulation. It shall be understood as evidences based on information received directly or indirectly by the exporter that the items will not be used for their usual application but will contribute to the elaboration of weapons of mass destruction or military items listed in the EU Military List.

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Some Member States give their own understanding of this concept (see comment on Article 5(1)).

The initial Commission's proposal included the provision that constrained Member States' authorities to reply within a delay of 20 working days from the presentation of a complete request by the exporter. Such proposal did not obtain the necessary majority within the Council to be adopted. The initial proposal of the Commission included also an obligation for the Member States to inform the Commission of such delays, which had to be published in the *Official Journal of the European Union*. The Member States did not support this proposal either.

5. A Member State may adopt or maintain national legislation imposing an authorisation requirement on the export of dual-use items not listed in Annex I if the exporter **has grounds for suspecting** that those items are or may be intended, in their entirety or in part, for any of the uses referred to in paragraph 1.

### Comment:

This provision, also known as the "suspicion clause", establishes the possibility for a Member State to impose an export authorisation, if an exporter has grounds for suspecting that the dual-use item not listed in Annex I he/she intends to export will contribute to the elaboration of a weapon of mass destruction or military items listed in the EU Military List. The responsibility to appreciate the **risk**, and not only the possibility of diversion as imposed by paragraph 4, lies with the exporter.

If an exporter, intentionally or by negligence, omits to apply for an export authorisation, his/her responsibility could be engaged and administrative and/or criminal sanctions could be applied.

The suspicion clause is **optional**. The following Member States have introduced such clause in their national export control regime: **Austria, Belgium (Walloon Region and Flemish Region), Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, Hungary, Ireland, Latvia, Luxembourg, Malta, Poland, Romania, Slovakia and Spain.**

**Italy** doesn't have a "suspicious clause". Anyway, art. 9 of Legislative Decree no. 221 of Dec. 15th, 2017 states that a licence requirement can be imposed by the competent Authority on an export operation concerning not listed dual use items or brokering of the same, if this Authority has information coming from qualified sources that this operation may violate human rights or be connected with CBRN proliferating actions.

In his/her **evaluation** of a risk of diversion and grounds for suspecting such diversion, the exporter may review the following elements/questions<sup>38</sup>:

1. Do you know your customer? If not, is it difficult to find information about him/her?
2. Is the customer or the end-user tied to the military or the defence industry?
3. Is the customer or the end-user tied to any military or governmental research body?
4. If you have done business with the customer before - is this a usual request for them to make? Does the product fit the business profile?
5. Does the customer seem familiar with the product and its performance characteristics or is there an obvious lack of technical knowledge?
6. Is the customer reluctant to provide an end-use statement or is the information insufficient compared to other negotiations?

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<sup>38</sup>List established by the Wassenaar Arrangement.

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7. Does the customer reject the customary installation, training or maintenance services provided?
8. Is unusual packaging and labelling required?
9. Is the shipping route unusual?
10. Does the customer order an excessive amount of spare parts or other items that are related to the product, but not to the stated end-use?
11. Is the customer offering unusually profitable payment terms, such as a much higher price?
12. Is the customer offering to pay in cash?

6. A Member State which imposes an authorisation requirement, in application of paragraphs 1 to 5, on the export of a dual-use item not listed in Annex I, shall, where appropriate, **inform** the other Member States and the Commission. The other Member States shall give all due consideration to this information and shall inform their customs administration and other relevant national authorities.

7. The provisions of Article 13(1), (2) and (5) to (7) shall apply to cases concerning dual-use items not listed in Annex I.

### **Comment:**

- Article 13(1) requires from Member States to notify to other Member States and the Commission their decision to refuse, annul, suspend, substantially limit or revoke an export authorisation.
- Article 13(2) establishes an obligation for the national licencing authorities of Member States to review their denials every three years in order to evaluate if they have to be maintained, amended or renewed.
- Article 13(5) provides that, before granting an authorisation for export, transit or brokering services, a Member State shall consult all valid denials regarding items **listed in Annex I**. In case an **essentially identical transaction** has been denied, the Member State ought to consult the Member State that has issued a denial.
- Article 13(6) requests that all notifications shall be made via secure electronic means.
- Article 13(7) concerns the confidentiality requirement with respect to information sharing process.

8. This Regulation is without prejudice to the right of Member States to take national measures under Article 11 of Regulation (EEC) No 2603/69.

### **Comment:**

Regulation (EEC) No. 2603/69 has been repealed by Council Regulation (EC) No. 1061/2009 of 19 October 2009 establishing common rules for exports<sup>39</sup>, and it has lastly been codified by Regulation 2015/479 of the European Parliament and of the Council of 11 Mars 2015 on common rules for exports (OJ L 83/34, 27/03/2015). Nevertheless, Article 11 has been included into the new Article 10 which authorises Member States “*without prejudice to other Union provisions*” to adopt or apply “*quantitative restrictions on exports on grounds of public morality, public policy or public security; the protection of health and life of humans,*

<sup>39</sup> Regulation 1061/2009 has been amended by Regulation (EU) No. 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures (OJ L18/1, 21/01/2014). Article 10 has not been modified.

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*animals or plants; the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property.*<sup>40</sup>

The term “**public security**” has been defined by the European Court of Justice in several cases: “*the concept of public security within the meaning of Article 11 of the Export Regulation covers both a Member State's **internal security and its external security** and that, consequently, the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations may affect the external security of a Member State*”<sup>41</sup>. In this regard the Court “*observed that it is common ground that the **exportation** of goods capable of being used for military purposes to a country at war with another country may affect the public security of a Member State*”<sup>42</sup>.

If a Member State can require an export authorisation, based on Article 11 in case of threat to the public security as defined above, it is not obvious that such authorisation can be applied to an export of dual-use items. According to the Court, Article 11 “*ceases to be justified if Community rules provide for the necessary measures to ensure protection of the interests enumerated in that article*”<sup>43</sup> which is precisely the case for dual-use items covered by Article 8 of this Regulation.

**Table 3: Conditions attached to national catch-all authorisations**

Member State	Catch-all conditions established by Member State
Austria	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Applies only to one specific transaction and valid for three years (Art. 4, 2<sup>nd</sup> indent of the Decision of the Flemish Government of 14 March 2014).</p>
Belgium (Flemish Region)	<p>When a transaction has been put under catch-all authorisation requirement, the procedure is treated as a standard individual licence procedure. An (original) end use certificate is required. In the exceptional case where the concern leading to the catch-all decision turns out to be unfounded, a normal individual licence will be granted for the transaction concerned. Specific conditions for use can be attached to any individual licence.</p> <p>That individual licence is personal and is granted for that specific transaction. It is valid for three years (Art. 4, 2<sup>nd</sup> indent of the Decision of the Flemish Government of 14 March 2014).</p>
Belgium (Brussels)	<p>Only an exporter is covered (legal entity or natural person).</p> <p>A catch-all authorisation is an individual decision which is valid only for the applicant.</p> <p>Applies to one specific transaction / end-user / consignee and valid for one year.</p>

<sup>40</sup> OJ L 291, 07/11/2009, p. 1.

<sup>41</sup> Ground 44 of Case 124/95 of 14 January 1997 *The Queen, ex parte Centro-Com Srl v HM Treasury and Bank of England*: [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61995J0124](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61995J0124).

<sup>42</sup> Ground 28 of Case C-70/94 of 17 October 1995. - *Fritz Werner Industrie-Ausrüstungen GmbH v Federal Republic of Germany*: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61994CJ0070&from=EN>.

<sup>43</sup> Ground 46 of Case 124/95 of 14 January 1997, *op cit*.

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Bulgaria	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Valid up to one year with the possibility of extension up to six months (like the individual export license).</p>
Croatia	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Valid for one year.</p>
Cyprus	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Valid until revocation.</p>
Czech Republic	<p>Only an exporter is covered (legal entity or natural person), valid for brokers and mother/daughter companies.</p> <p>Valid until revocation.</p>
Denmark	<p>Only an exporter is covered (legal entity), not valid for mother/daughter companies.</p> <p>Applies to one specific transaction and valid for 2 years or until revocation.</p>
Estonia	<p>Only an exporter is covered (legal entity or natural person), normally not valid for mother/daughter companies.</p> <p>Applies to one specific transaction and is valid until the validity of a licence or until revocation.</p>
Finland	<p>Only an exporter is covered (legal entity or natural person), valid for mother/daughter companies, if located in Finland.</p> <p>Applies to one specific transaction and valid until revocation.</p>
France	<p>Only an exporter is covered, not valid for mother/daughter companies.</p> <p>Valid until prospect under catch-all is pending.</p>
Germany	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Applies to one specific transaction and valid until revocation.</p>

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Greece	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Applies to one specific transaction and valid for 2 months or until revocation.</p>
Hungary	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>The catch-all decision is valid until revoked, or a license is granted on the same subject matter or if the circumstance that triggered the catch-all has changed substantially.</p>
Ireland	<p>A licence issued under the “catch-all” clause is for the export of specified goods to a specified end user for a specified end use.</p>
Italy	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Valid for three years and could be renewed.</p>
Latvia	<p>None.</p> <p>One individual licence for one transfer to an appointed end-user.</p>
Lithuania	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Only individual licences can be granted. Valid for 1 year.</p>
Luxembourg	<p>Conditions for catch-all clause authorisations are decided by the Ministers on a case-by-case basis.</p>
Malta	<p>Only an exporter is covered (natural person only).</p>
Netherlands	<p>Only an exporter is covered (legal entity or natural person), normally not valid for mother/daughter companies (depends on the level of control of mother company).</p> <p>Valid until revocation. The catch-all is applied for exports of the specific shipment in question that has led to the catch-all, but also for any other shipments after that. It is imposed on a country, not a specific end user, in order to take into account the risk of diversion. Further, a condition is imposed that if the goods get another destination than the country for which a licence requirement is imposed, the exporter has to inform its authorities.</p>
Poland	<p>Only an exporter is covered (legal entity or natural person), not valid for related</p>

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	companies.
Portugal	<p>Only an exporter is covered (legal entity or natural person), valid for related companies.</p> <p>Valid until revocation.</p>
Romania	<p>Whether the National authority decides to apply catch-all procedure, shall immediately inform the exporter and the other authorities concerned (customs, services). The catch-all clause is established by an executive order, published in the National Gazette. It is valid until its revocation, or if the national legislation changes. Only the Romanian exporter is covered (legal or natural person), the order it is not valid for mother/daughter companies.</p> <p>The exporter shall inform the National Authority whether he still intends to export the items. In this case, he shall apply for a license, after the executive order establishing the catch-all clause is published in the National Gazette.</p> <p>After publication, the executive order applies to any exporter who is involved in an essentially identical transaction.</p> <p>If an exporter evades the final decision of the National authority and exports or attempts to export without license, he commits a criminal offence.</p>
Slovakia	Conditions of “catch-all” authorisations are the same as for dual use items.
Slovenia	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Valid until revocation.</p>
Spain	<p>Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.</p> <p>Fixed term or until revocation.</p>
Sweden	There are no specific conditions attached to catch-all clause authorisations.

**Table 4: Effects of the non-response of an authority of a Member State in case it has implemented a catch-all provision and average time to answer (4.3, 4.4 and 4.5)**

Member State	Consequence of lack of an answer from an authority of a Member State
Austria	Once the item is "caught", its export requires an authorization, i.e. the exporter may not export the item without a license. Otherwise he would commit a punishable offense.

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<b>Belgium</b>	<p>If an exporter fails to await the decision of the licencing office and export or attempt to export, he or she commits a criminal offence in case the licencing office decides to make the export subject to authorisation. Belgian legislation does not provide a timeframe in which the licencing office is required to answer an exporter's request concerning (non-listed) dual-use goods.</p> <p>If an exporter has reported a transaction, a time to answer varies from one day to several weeks.</p>
<b>Bulgaria</b>	<p>Answer is given within 30 days after receipt of the application. The applicant is informed by the final decision within 7 days. Export under the catch-all clause could be performed only after the official approval by the authority.</p>
<b>Croatia</b>	<p>Exporter has to await the answer of the authorities and it will be an offence if he or she fails to do so. Dual-use items can be exported only after the Ministry has granted an export licence or decided that the licence is not required. There is a 30 days deadline for a decision of the authorities and 60 days if additional information is required.</p>
<b>Cyprus</b>	<p>The exporter has to wait the answer of the authorities. Dual-use items can be exported only after the Licensing Office has granted an export licence or decided that the licence is not required.</p> <p>No specific deadline to answer.</p>
<b>Czech Republic</b>	<p>Exporter has to await the answer of the authorities and it will be an offence if he or she fails to do so. The deadlines for decision process including a processing of an application are 30 days or, in special cases, 60 days starting from the day when an application was submitted.</p> <p>If an exporter has reported a transaction, a time to answer is up to 30 days.</p>
<b>Denmark</b>	<p>An exporter has to await the decision of the authorities in relation to Article 4(4) and if he or she fails such act would be seen as a criminal offence according to Danish Law. Exporter's failure to wait might also entail an administrative sanction, i.e. fine.</p>
<b>Estonia</b>	<p>There is no timeframe, but an exporter is obliged to await the decision. The authority answers without delay. The time can vary from days to weeks.</p>
<b>Finland</b>	<p>Exporter has to wait. Answer by the licensing authority shall be given without undue delay. Upon request, the authority shall supply the exporter with an estimated deadline to issue a decision. (Finnish Administrative Procedure Act 434/2003, Section 23).</p>
<b>France</b>	<p>Silence of the authority is legally considered to be a denial after 9 months.</p>

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Germany	<p>Exporter is obliged to await the decision of the authorities and it would be an offence according to German Law if he or she fails to do so.</p> <p><u>Examples:</u>  <u>According to § 18 (5) Foreign Trade and Payments Act (AWG) – entering into force on 1<sup>st</sup> September 2013 - a prison sentence of up to five years may be imposed on anyone who exports without export authorisation according to Art. 4 (1), (2), (3), (4) Reg. (EC) No 428/2009.</u>  <u>According to § 18 (6) AWG the attempt is also punished.</u>  <u>According to § 18 (7) AWG a prison sentence not below 1 year (up to 15 years) will be imposed on anyone who commits an act described above, acting professionally or as a member of a gang that has been formed for the continuous committal of such criminal offences.</u></p> <p><u>According to § 18 (8) AWG a prison sentence not below 2 years (up to 15 years) will be imposed on anyone who commits an act described above, acting professionally as a member of a gang that has been formed for the continuous committal of such criminal offences.</u></p>
Greece	No average time of reply. Depends on the case.
Hungary	An exporter has to await the answer of the authorities. However, if no answer is received within the legally set timeframe, the applicant may file a complaint at the supervisory administrative body, which will order the silent administrative body to act or will decide itself.
Ireland	If an exporter has been advised that a licensing requirement is being invoked pursuant to the catch-all clause, they must await the decision on the licence application before exporting the goods. Irish legislation does not provide a fixed time period in which an application will be considered, this varies from case to case.
Italy	From when an exporter has applied to the Authority, after getting a catch-all authorisation, his application is dealt with as with any individual licence application (between 30 and 60 days to get a licence or a denial).
Latvia	No effects of non-response.

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<b>Lithuania</b>	<p>Exporter's (legal or natural person) request to provide information has to be considered within 20 working days starting from its receipt by the competent authority.</p> <p>Exporter has to await the decision from licensing authority. Normally decision on license issuance is made within 30 working days.</p> <p>If the reply is not delivered within a specific deadline set for consideration of a request (application), or when an exporter objects to the reply delivered by the competent authority he or she is entitled to make a complaint in conformity to the procedures laid down within Chapter III of the Republic of Lithuania Law on Public Administration and other legal acts (Article 14 of the Republic of Lithuania Law on Public Administration (27.06.2006 No X-736) and Article 30 of the Government of the Republic of Lithuania Resolution No 875 dated 22.08.2007).</p>
<b>Luxembourg</b>	<p>The silence of the competent authority regarding an application does not automatically mean that the license is granted (neither for DU-Goods, nor for military defence products). Average time to answer is set by the Law at up to 60 business days.</p>
<b>Netherlands</b>	<p>If an exporter has reported a transaction, he or she has to await the decision and it would be an offense if he or she fails to do so. In general, the time to respond to a licence application is 8 weeks. However, there are specific situations in which this period can be extended. The extension will generally take another 8 weeks.</p>
<b>Poland</b>	<p>Exporter has to await the decision of the authorities and it would be an offence according to Polish Export Control Law if he or she fails to do so. According to the Polish Administrative Code the decision shall be given without undue delay, but not later than 30 days. However, in special cases this deadline can be postponed but the authority has to supply the exporter with an estimated deadline to issue a decision.</p>
<b>Portugal</b>	<p>If an exporter has reported a transaction, he or she has to await the decision and it would be an offense if he or she fails to do so the time to answer is up to 10 days.</p>
<b>Romania</b>	<p>According to the Romanian legislation, the competent authorities must always provide an answer in response to a consultancy application sent by an exporter. The time frame is up to 30 days after receiving all relevant documents. If the catch-all procedure is necessary, the National Authority shall immediately inform the exporter he shall apply for a license. The time frame to process a licence application for catch all is the same as for any individual licence, up to 45 days after receiving all relevant documents. However, the overall period is longer due to the need to complete all necessary steps.</p>
<b>Slovakia</b>	<p>The authority has to decide within 90 days on an application. In case of exporting without a licence there's a penalty.</p>
<b>Slovenia</b>	<p>Exporter is obliged to wait for the decision of the Ministry. In case of exporting without a licence there's a penalty.</p>

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Spain	Licence not granted. Average time is the normal procedure to manage a licence inquiry.
Sweden	If the exporter has been informed that the product has been put under export control through a catch-all decision then the exporter needs to wait for the decision on the license application by the Swedish Export Control Agency.

**Table 5: Possibility to appeal against a catch-all denial issued by a Member State**

Member State	Possibility to appeal against a catch-all denial
Austria	Yes. Only administrative appeal to Administrative Court is possible.
Belgium	Yes, by an appeal before to the Administrative Court (State Council).
Bulgaria	Catch-all denial may be appealed under the procedure of the Administrative Procedure Code.
Croatia	Yes, an action to the Administrative Court is possible.
Cyprus	An appeal is possible to the Court.
Czech Republic	It is not possible to lodge a remonstrance against a decision of the Ministry regarding the granting, non-granting, cancellation, suspension, modification, or revocation of an individual export authorisation, global export authorisation, or authorisation to provide brokering services. Such a decision is excluded from the decision-making processes of the courts of law (para 10 of Act No. 594/2004 Coll.).
Denmark	Yes, the exporter can appeal to a higher authority.
Estonia	Yes, as it is the case for any administrative decision, it may be disputed in an administrative court.
Finland	Yes, an appeal to the Highest Administrative Court is possible.
France	Yes, same procedure as for denial based on license application:  1 informal appeal (demand for reconsideration);  2 formal appeal to Administrative Court.

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Germany	Yes.
Greece	Yes, appeal to the Administrative Court is possible like for all administrative decisions (no special procedure).
Hungary	Yes, first appeal to the second instance at the director general of the licencing authority under administrative procedures (governed by law), and afterwards petition to the Court for reviewing administrative decisions.
Ireland	A statutory right of appeal is provided for in the Control of Exports (Appeals) Regulations 2018 (S.I. No. 457 of 2018).
Italy	Yes.
Latvia	Yes. Any denial of any licence can be appealed in the Administrative Court during the period of 1 month, when the denial was issued.
Lithuania	Yes.
Luxembourg	Any denial of any licence can be appealed in the Administrative Court during the period of three months after notification of the denial to the concerned exporter.
Netherlands	Yes, it is possible to appeal against a catch-all licencing decision, regardless if it is an approval or a denial.
Poland	Yes, it is possible to appeal against a catch-all licencing decision, regardless if it is an approval or a denial.
Portugal	Yes.
Romania	Yes.
Slovakia	Yes.
Slovenia	Yes, the exporter can appeal to Administrative Court.
Spain	Yes. Administrative appeal and appeal to a Court.
Sweden	No.

*Article 4*

**Table 6: Catch-all export controls other than those required by Article 4**

Member State	Additional catch-all controls
Austria	In certain cases, for countries not subject to embargo (Article 7 of Foreign Trade Act. 2005).
Belgium	None.
Bulgaria	None.
Croatia	None.
Cyprus	None.
Czech Republic	None.
Denmark	None.
Estonia	Yes, for non-listed goods which have characteristics of export of controlled goods due to their qualities, end-use or end-user or for the considerations related to the public security or human rights. Strategic goods Act §2 (11).
Finland	None.
France	Yes, based on article 8 of EC 428/2009.
Germany	<p>Sect. 9 AWV: Use of the items in the nuclear area and specific country: 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 category 0 of Annex I Reg. (EC) No. 428/2009.</p> <p>An authorisation pursuant to section 9 AWV shall only be required if the purchasing country or country of destination is one of the following: Algeria, Iran, Iraq, Israel, Jordan, Libya, North Korea, Pakistan, and Syria.</p>
Greece	None.

*Article 4*

Hungary	None.
Ireland	None.
Italy	None.
Latvia	None.
Lithuania	None.
Luxembourg	None.
Malta	None.
Netherlands	None.
Poland	None.
Portugal	None.
Romania	Yes, for art. 8 of EC Regulation 428/2009.
Slovakia	None.
Slovenia	None.
Spain	None. Spain has no national regulation on this topic.
Sweden	None.