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CHAPTER V Authorisation procedures

Article 20 Types of authorisations and issuing authorities

1. A Union General Export Authorisation for certain exports as set out in Annex V is established by this Regulation.

Comment:

The European Union General Export Authorisation (EU GEA) is one of the essential elements of this Regulation. It constitutes a unique authorisation granted directly at the EU level. It is important to note that normally no complementary national authorisation will be necessary.

It is valid:

- for all **goods** listed in Annex III
- for **export**
- for **technical assistance** necessary for the good exported is provided by the same exporter
- for the following **destination**:

Danish territories not included in the customs territory (Faroe Islands, Greenland), French territories not included in the customs territory (French Polynesia, French Southern and Antarctic Territories, New Caledonia and Dependencies, Saint-Barthélemy, Saint Pierre and Miquelon, Wallis and Futuna Islands), Dutch territories not included in the customs territory (Aruba, Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten) relevant British territories not included in the customs territory (Anguilla, Bermuda, Falkland Islands, Gibraltar, Montserrat, Saint Helena and Dependencies, South Georgia and the South Sandwich Islands, Turks and Caicos Islands), Albania, Andorra, Argentina, Australia, Benin, Bolivia, Bosnia and Herzegovina, Canada, Cape Verde, Colombia, Costa Rica, Djibouti, Ecuador, Former Yugoslav Republic of Macedonia, Gabon, Georgia, Guinea-Bissau, Honduras, Iceland, Kyrgyzstan, Liberia, Liechtenstein, Mexico, Moldova, Mongolia, Montenegro, Mozambique, Namibia, Nepal, New Zealand, Nicaragua, Norway, Panama, Paraguay, Philippines, Rwanda, San Marino, Serbia, Seychelles, South Africa, Switzerland (including Büsingen and Campione d'Italia), Timor-Leste, Turkey, Turkmenistan, Ukraine, Uruguay, Uzbekistan, Venezuela

The use of the EUGEA is **prohibited** if:

- Exporter has been prohibited from using this general export authorisation due to reasonable suspicion about the exporter's **ability to comply** with the terms of this authorisation or with a provision of the export control legislation;
- Exporter **has been informed or knows** that the goods in question are or may be intended, in their entirety or in part, either for re-export to a third country or to be used for the purpose of capital punishment in a third country;
- Goods are exported to a **customs free zone or free warehouse** which is located in a destination covered by this general export authorisation;
- Exporter is the manufacturer of the medicinal products in question and has **not made a legally binding agreement** with the distributor requiring the latter to make all supplies and transfers subject to the conclusion of a legally binding agreement requiring the customer not to use, not

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- to supply if there is a risk that the goods will be intended to be used for the purpose of capital punishment and requiring the same conditions to any third party;
- Exporter is **not the manufacturer** of the medicinal products in question and has not obtained a signed **end-user declaration** from the end-user in the country of destination;
 - Exporter of medicinal products has not concluded a **legally binding agreement with the distributor** or end-user requiring to obtain **prior authorisation** from the exporter for any transfer or supply of any part of the shipment to:
 - a law enforcement authority in a country or territory that has not abolished capital punishment;
 - a natural or legal person, entity or body procuring relevant goods for or providing services involving use of such goods to such a law enforcement authority, and
 - any re-export or transfer of any part of the shipment to a country or territory that has not abolished capital punishment;
 - the exporter of goods other than medicinal **products** has not concluded a legally binding agreement as defined above with the end-user.

Exporters that use this general export authorisation EU GEA 1236/2005 shall **notify** the competent authorities of the Member State where they are resident or established of their first use of this general export authorisation no later than 30 days after the date when the first export took place. Member State may require exporters resident or established in that Member State to **register prior** to the first use of this general export authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within ten working days of receipt.

Reporting requirements attached to the use of this general export authorisation and any additional information are defined by Member States.

The competent authority of the Member State where the exporter is resident or established can prohibit the exporter from using this authorisation, if there is reasonable suspicion about the exporter's ability to comply with the terms of this authorisation or with a provision of the export control legislation.

The competent authorities of the Member States shall exchange information on all exporters deprived of the right to use the Union General Export Authorisation, unless they determine that a specific exporter will not attempt to export goods listed in Annex IV through another Member State. A secure and encrypted system for exchange of information shall be used for this purpose.

2. An authorisation for exports other than those referred to in paragraph 1 for which an authorisation is required under this Regulation shall be granted by the competent authority of the Member State where the exporter is resident or established, as listed in Annex I. Such authorisation may be an individual or a global authorisation, if it concerns goods listed in Annex III or in Annex IV. An authorisation concerning goods listed in Annex II shall be an individual authorisation.

3. An authorisation for transit of goods listed in Annex II shall be granted by the competent authority of the Member State where the natural or legal person, entity or body transporting the goods within the customs territory of the Union is resident or established, as listed in Annex I. If that person, entity or body is not resident or established in a Member State, an authorisation shall

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be granted by the competent authority of the Member State in which the entry of goods into the customs territory of the Union takes place. Such an authorisation shall be an individual authorisation.

4. An authorisation for imports for which an authorisation is required under this Regulation shall be granted by the competent authority of the Member State where the museum is established, as listed in Annex I. An authorisation concerning goods listed in Annex II shall be an individual authorisation.

Comment:

Annex II concerns goods which have no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

5. An authorisation for the supply of technical assistance related to goods listed in Annex II shall be granted by:

- (a) the competent authority of the Member State where the supplier of technical assistance is resident or established, as listed in Annex I, or, if there is no such Member State, the competent authority of the Member State of which the supplier of technical assistance is a national or under whose law it has been incorporated or constituted, if the assistance is to be supplied to a museum in a third country; or
- (b) the competent authority of the Member State where the museum is established, as listed in Annex I, if the assistance is to be supplied to a museum in the Union.

6. An authorisation for the supply of technical assistance related to goods listed in Annex III or in Annex IV shall be granted by the competent authority of the Member State where the supplier of technical assistance is resident or established, as listed in Annex I, or, if there is no such Member State, the competent authority of the Member State of which the supplier of technical assistance is a national or under whose law it has been incorporated or constituted.

Comment:

Paragraphs 5 and 6 on the supply of technical assistance concern import in the EU and export out of the EU.

7. An authorisation for the supply of brokering services related to goods listed in Annex III or in Annex IV shall be granted by the competent authority of the Member State where the broker is resident or established, as listed in Annex I, or, if there is no such Member State, the competent authority of the Member State of which the broker is a national or under whose law it has been incorporated or constituted. Such an authorisation shall be granted for a set quantity of specific goods moving between two or more third countries. The location of the goods in the originating third country, the end-user and its exact location shall be clearly identified.

8. Applicants shall supply the competent authority with all relevant information required for their applications for an individual or global authorisation for exports or for brokering services, for an

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authorisation for technical assistance, for an individual import authorisation or for an individual authorisation for transit.

As regards exports the competent authorities shall receive complete information in particular on the end-user, the country of destination and the end-use of the goods.

As regards brokering services the competent authorities shall in particular receive details of the location of the goods in the originating third country, a clear description of the goods and the quantity involved, third parties involved in the transaction, the third country of destination, the end-user in that country and its exact location.

The granting of an authorisation may be subject to an end-use statement, if appropriate.

Comment:

End-use statement usually takes the form of an end-user certificate, which is a document issued by the recipient Government or by the recipient company. It contains information on the items transferred, on the exporter, on the consignee if involved, on the end-user, on the application authorised and finally a commitment of the recipient to not export or re-export the items without a prior consent of the initial exporting country. It should be noted that there is no official legally binding model for an end-user certificate. However, some international agreements, notably the Wassenaar Arrangement, give a common understanding of the information to be included in this document.⁴³

An EU example could be found for dual-use items with the best practice recommendations for elements of a Community end-use certificate adopted the Council Working Party on Dual-Use Goods in 2008. These non-legally binding recommendations were published in the C series of the *Official Journal of the European Union*; they contain information on the parties, the items and the commitments to be certified by the foreign consignee who might act as an end-user or as a trader, whole or re-seller⁴⁴.

9. By way of derogation from paragraph 8, where a manufacturer or a manufacturer's representative is to export or to sell and transfer goods included in point 3.2 or 3.3 of Annex III or in section 1 of Annex IV to a distributor in a third country, the manufacturer shall provide information on the arrangements made and the measures taken to prevent the goods included in point 3.2 or 3.3 of Annex III from being used for torture or other cruel, inhuman or degrading treatment or punishment or to prevent the goods included in section 1 of Annex IV from being used for capital punishment, on the country of destination and, if it is available, information on the end-use and the end-users of the goods.

10. Upon request of a national preventive mechanism established under the Optional Protocol to the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

⁴³ The Wassenaar Guidelines concerning End-Use and End-User Controls can be found at: <https://www.wassenaar.org/best-practices/>.

⁴⁴ OJ C 11, 16.1.2009, p. 1. This document can be found at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009H0116%2801%29>.

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Punishment, the competent authorities may decide to make the information they have received from an applicant on the country of destination, the consignee, the end-use and the end-users or, where relevant, the distributor and the arrangements and measures referred to in paragraph 9, available to the requesting national preventive mechanism. The competent authorities shall hear the applicant before the information is made available and may impose restrictions on the use that can be made of the information. The competent authorities shall make their decisions in accordance with national laws and practice.

Comment:

National preventive mechanisms or the prevention of torture at the domestic level are established by each State party to the Protocol. They shall be granted at a minimum the power:

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation⁴⁵.

11. Member States shall process requests for individual or global authorisations within a period of time to be determined by national law or practice.

⁴⁵ Article 18 of the Protocol.