

WA-LEOM (00) ES 1
17-02-00**Part 2. Dual-Use Goods, Software and Related Technology****1. Basic principles, policies and/or national practices regarding relevant exports**

Spain's export policy on dual-use products, software and related technology is marked by its legality, taking account of national interests, international agreements in the field, and with particular reference to E.C. Council Regulation no. 3381/94 establishing a Community system of controls on dual-use products, together with the international commitments derived from its participation in international export control forums such as the Wassenaar Arrangement, the Australia Group, the Nuclear Suppliers Group and the Missile Technology Control Regime.

2. The national legislation governing relevant exports and any additional specific legislation covering transit, transshipment, trafficking and/or brokering (see Question 7)

- a) EC Council Regulation no. 3381/94 of December 19 1994 establishing a Community system of controls on dual-use product exports (DOCE L 367, 31/12/94) amended by EC Council Regulation no. 837/95 of April 10 (DOCE L 90, 21/4/95). Rectification of EC Council Regulation no. 3381/94 (DOCE L 52, 1/3/96).
- b) The Council's Decision of December 19 (94/942/PESC) concerning common action taken by the Council on the basis of Article J.3. of the TUE referring to controls on exports of dual-use products (DOCE L 367, 31/12/94) amended by the following Decision:
 - 1999/193/PESC (DOCE L 73, 19/3/99) which includes a complete new Addendum I dealing with the List of Dual-Use Products.
- c) Royal Decree no. 491 of March 27 1998 (Official State Gazette no. 84) approving the Defence and Dual-Use Material Foreign Trade Regulations.
- d) The Ministerial Order of June 30 1998 (Official State Gazette no. 163) regulating the procedures and formalities for overseas trade in defence and dual-use material.

3. Any other national controls for items not on the WA list that can be controlled for the purposes of the Arrangement, e.g. catch-all legislation.

There is no specific legislation beyond that mentioned in reply to Question 2.

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4. The procedures for processing relevant export applications:
- d) Who is the issuing authority?
 - e) What other authorities are involved and what is their function?
 - f) Who deals with compliance/enforcement?

Please see the reply to Question 4 in Part 1.

5. Principles and national regulations on the destination or end-user of the equipment. Please describe your controls for Basic List, Tier 1 and Tier 2 dual-use goods, software and technology.

Is there a complete *erga omnes* system or a published list of:

- a) Destinations of concern?
- b) Embargoed countries?
- c) Differentiation between destinations, e.g. is there any preferential treatment of (groups of) countries?

The controls applied to the three lists arise from EC Council Regulation no. 3381/94 of December 19, Royal Decree no. 491 of March 27 1998, and the Order of the Ministry of the Economy and Finance of June 30 1998.

This is an *erga omnes* system.

- a) The destinations taken into account are those which emerge in exchanges of information in the various control systems, and those appearing in refusals received.
 - b) There is no national list of embargoed countries but rather a compilation of the international bodies' embargoes (the United Nations and the European Union).
 - c) The countries in Addendum II to the European Regulations.
6. Requirements for the provision of an end-user certificate in an export licence application, any non-re-exportation clauses or any other type of certification before and/or after delivery for relevant export contracts. If applicable, please specify whether any such end-user certificates are verified before or after delivery, and any differences for Basic List, Tier 1 or Tier 2 dual-use goods, software and technology.

In general, a Final Destination Declaration is required in applications for authorisations and for the preliminary agreement referred to in the articles on dual-use products, set out in Chapter III, Article 25 of Royal Decree no. 491 of March 27 1998 (Official State Gazette no. 84) and in General Provision Twenty-Eight of the Ministerial Order of June 30 1998 (Official State Gazette no. 163).

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The Spanish authorities may also demand such control documents as may be considered necessary, including the Final Destination Certificate, from countries not belonging to the main control forums or even those where, while included, this is deemed convenient in the light of their particular features.

7. National definition of:

- transit
- transshipment (including custom free zones)
- trafficking, and
- brokering

of conventional arms, including related software and technology, and provide details of respective compliance/enforcement procedures.

The Spanish provisions do not include these definitions except for the transit of regulation arms.

8. The exporter's obligation to seek official government authority to enter into contract negotiations or to sign contracts with foreign customers.

Please see the reply to Question 8 in Part 1.

9. Policy on the revocation or suspension of export licences once they have been approved; please list any published regulations.

Please see the reply to Question 9 in Part 1.

10. The penal, financial and/or administrative implications for any exporter failing to comply with national controls.

Please see the reply to Question 10 in Part 1.

11. Any circumstances in which relevant exports do not require an export licence, including free-licence situations.

Please see the reply to Question 11 in Part 1.

12. Official licence applications and licence documents and any standard conditions attached to the licence (copies to be provided)

Copies enclosed.

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13. Different types of licences (e.g. individual, general, restricted, full, permanent, temporary, etc.) and what they are used for.

Please see the reply to Question 13 in Part 1.

14. Advice given to exporters as to licensability, such as the likelihood of approval for a possible transaction.

Please see the reply to Question 14 in Part 1.

15. Any other pertinent information pertaining to relevant exports, e.g. the involvement of executive and/or legislative authorities in the export control administration such as in the approval process. What are the reporting requirements to the executive and/or legislative authorities?

Please see the first two paragraphs of the reply to Question 15 in Part 1.

16. Any other programs in place to assist exporters to become aware of their responsibilities with regard to exports.

Please see the reply to Question 16 in Part 1.

17. Are all related technology/software transfers controlled whether they are tangible or intangible (e.g., fax, phone, Internet, etc.)? Is the transfer of know-how controlled?

Please see the reply to Question 17 in Part 1.

18. National practices regarding *de minimis* both on value and content.

None.

19. National controls regarding re-exports.

Please see the reply to Question 6 in Part 1.