

29.11.2024



Export control of dual-use items

Obligations for
companies

Ulkoministeriö
Utrikesministeriet
Ministry for Foreign Affairs

These guidelines are intended to help companies understand what dual-use items are and how the legislation concerning dual-use items is applied. The aim is to clarify the provisions and procedures for export companies that have the responsibility to familiarise themselves with the national and EU legislation governing the export of dual-use items.

What are dual-use items and why is their export subject to control?

Dual-use items are goods, software or technologies that are suitable for both civilian and military purposes and/or the development of weapons of mass destructions (WMDs). This is why exporting dual-use items requires authorisation.

Export control seeks to promote the responsible export of Finnish technology. Export control also aims to

prevent the use of Finnish technology for the development of WMDs, for undesirable military ends, for purposes against the interests of Finland, or for purposes that violate human rights.

The international export control regime allows Finnish companies to access controlled products and technology manufactured elsewhere.

Legislation concerning the export of dual-use items

The key provisions on the export of dual-use items are laid down in an EU regulation and in a national act.

EU Regulation

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 (eur-lex.europa.eu/eli/reg/2021/821)

- Annex I to the Regulation contains a list of items that are subject to control when they are exported from Finland to a destination outside the customs territory of the European Union. Annex IV to the Regulation contains a list of items that are subject to authorisation when they are transferred within the EU.

- The Regulation leaves room for national discretion when it comes to, for example, the organisation of authorities' responsibilities, control and enforcement measures, imposition of sanctions, and certain matters related to the authorisation requirement and notification obligations.

National Act

Act on the Export Control of Dual-Use Items (500/2024)
(finlex.fi/fi/laki/alkup/2024/20240500)

- The new national Act entered into force on 15 September 2024. The Act includes provisions on the authorities responsible for issuing authorisations and for enforcement as well as on national authorisation requirements and notification obligations, and authorisation procedures and control measures. The Criminal Code lays down provisions on the punishments for a failure to comply with the Act.

- A key reform in the new Act is that it contains a national control list. The items mentioned on this list are subject to export control.



Guidelines for applying the legislation on the export of dual-use items

This section explains what kind of obligations companies have under the national Act and the EU Regulation. We have grouped them into obligations for exporters, brokers and providers of technical assistance. First, we will introduce the key articles of the EU Regulation that are binding on all companies and are the foundation for the export control of dual-use items.

The most important provisions on the export control of dual-use items are laid down in Articles 3 and 4 of the EU Regulation. These articles are binding on exporters, brokers and providers of technical assistance.

Article 3 – exports subject to authorisation:

An authorisation is required for the export of dual-use items listed in Annex I.

Article 4(1) – prohibited end-use:

An authorisation is required for the export of an item if it is intended, in its entirety or in part:

- i. for the handling of or other purposes related to chemical, biological or nuclear weapons
- ii. for a military end-use if the country of destination is subject to an arms embargo
- iii. for use as parts or components of certain military items listed in the national military list.

Obligations for exporters

EU Regulation 2021/821

Article 4(2)

If an exporter is aware that the dual-use items which it proposes to export are intended, in their entirety or in part, for any of the prohibited end-uses referred to in Article 4(1), the exporter must notify the Ministry for Foreign Affairs.

Article 5

An authorisation is required for the export of cyber-surveillance items not listed in Annex I to the Regulation if the exporter has been informed by the Ministry for Foreign Affairs that the items in question may be intended for use in connection with internal repression or the commission of violations of human rights.

If an exporter is aware that items which it proposes to export are intended for any use referred to above, the exporter must notify the Ministry for Foreign Affairs.

Article 10

An authorisation is required for the export of dual-use items not listed in Annex I if another Member State has included the items in question in its national control list.

In addition, a company must have been informed that the items in question are intended for uses of concern with respect to public security, including the prevention of acts of terrorism, or to human rights considerations.

Article 11

An authorisation is required for intra-Union transfers of dual-use items listed in Annex IV to the Dual-Use Regulation.

Article 12

An exporter must supply all relevant information required for their application for an export authorisation. In particular, the exporter must provide complete information about the end-user, the country of destination and the end-use of the items to be exported.

An end-use statement (EUS) is required for individual export authorisations (and, where necessary, for global export authorisations).

An exporter using global export authorisations must implement an internal compliance programme (ICP) unless the competent authority considers it unnecessary.

Article 21

At the customs office, an exporter of dual-use items must present proof that the necessary export authorisation has been obtained.

The exporter may be required to present a translation of any such documents into an official language of the country where the export declaration is presented.

Article 27

An exporter of dual-use items must keep, for at least five years, detailed registers or records of commercial documents containing the following information:

- a)** a description of the dual-use items,
- b)** the quantity of the dual-use items,
- c)** the name and address of the exporter and of the consignee,
- d)** the end-use and end-user of the dual-use items.

The registers and records must be submitted to the Ministry for Foreign Affairs upon request.

National Act (500/2024)

Section 5

An exporter must notify the Ministry for Foreign Affairs if it has reason to suspect that the dual-use items to be exported are intended for any of the prohibited end-uses referred to in Article 4(1) of the EU Regulation.

Section 6

An exporter must apply for an authorisation for dual-use items, if the Ministry for Foreign Affairs has made the export of the items subject to authorisation on the grounds that the items in question are intended for a use that may significantly endanger public security or Finland's national security.

Section 7

An export authorisation is required for the export of dual-use items listed in the Annex to the national Act, from Finland to a destination outside the European Union. The Ministry for Foreign Affairs is the issuing authority.

Section 9

An exporter who has been issued with a global export authorisation must report on the use of the authorisation to the Ministry for Foreign Affairs annually.

Section 15, subsection 2

An exporter must provide the Ministry for Foreign Affairs and Finnish Customs with information that is essential for the performance of their duties laid down in the national Act or in the Dual-Use Regulation.

Obligations for brokers

EU Regulation 2021/821

Article 6

An authorisation is required for the provision of brokering services of dual-use items listed in Annex I to the Dual-Use Regulation if the broker has been informed by the Ministry for Foreign Affairs that the items in question are intended for any of the prohibited end-uses referred to in Article 4(1).

If a broker proposes to provide brokering services of dual-use items listed in Annex I and is aware that those items are intended, in their entirety or in part, for any of the prohibited end-uses referred to in Article 4(1), the broker must notify the Ministry for Foreign Affairs.

Article 13

A broker must supply the Ministry for Foreign Affairs with all relevant information required for their application for authorisation, including

- a) details of the location of the dual-use items,
- b) a description of the items and their quantity,
- c) third parties involved in the transaction,
- d) the country of destination,
- e) the end-user and its exact location in the country of destination.

Article 27

A broker must keep, for at least five years, detailed registers or records of commercial documents containing the following information:

- a) a description of the dual-use items that were the subject of brokering services,
- b) the period during which the items were the subject of such services,
- c) the destination of such services,
- d) the countries concerned by those services.

The registers and records must be submitted to the Ministry for Foreign Affairs upon request.

National Act (500/2024)

Section 5

A broker must notify the Ministry for Foreign Affairs of an export if the broker suspects that the items are intended for any of the prohibited end-uses referred to in Article 4(1) of the EU Regulation.

Section 6

An authorisation is required for the provision of brokering services of dual-use items not listed in Annex I to the Dual-Use Regulation if the broker has been informed by the Ministry for Foreign Affairs that the items in question are intended for any of the prohibited end-uses referred to in Article 4(1).

Section 15, subsection 2

A broker must provide the Ministry for Foreign Affairs and Finnish Customs with information that is essential for the performance of their duties laid down in the national Act or in the Dual-Use Regulation.



Obligations for providers of technical assistance

EU Regulation 2021/821

Article 8

An authorisation is required for the provision of technical assistance related to dual-use items listed in Annex I to the Dual-Use Regulation if the provider of technical assistance has been informed by the Ministry for Foreign Affairs that the items in question are intended for any of the prohibited end-uses referred to in Article 4(1).

If a provider of technical assistance proposes to provide technical assistance for dual-use items listed in Annex I and is aware that those items are intended, in their entirety or in part, for any of the prohibited end-uses referred to in Article 4(1), the provider of technical assistance must notify the Ministry for Foreign Affairs.

Article 13

A provider of technical assistance must supply the Ministry for Foreign Affairs with all relevant information required for their application for authorisation, including

- a) details of the location of the dual-use items,
- b) a description of the items and their quantity,
- c) third parties involved in the transaction,
- d) the country of destination,
- e) the end-user and its exact location in the country of destination.

Article 27

A provider of technical assistance must keep, for at least five years, detailed registers or records of commercial documents containing the following information:

- a) a description of the dual-use items that were the subject of technical assistance,
- b) the period during which the items were the subject of such services,
- c) the destination of such services,
- d) the countries concerned by those services.

The registers and records must be submitted to the Ministry for Foreign Affairs upon request.

National Act (500/2024)

Section 15, subsection 2

A provider of technical assistance must provide the Ministry for Foreign Affairs and Finnish Customs with information that is essential for the performance of their duties laid down in the national Act or in the Dual-Use Regulation.



What do companies need to know about the new national Act?

The Act includes a national control list

The Annex to the Act includes a national control list. An export authorisation is required for the export of dual-use items referred to in the Annex, from Finland to a destination outside the customs territory of the European Union. This is necessary to safeguard national security and to ensure that the objectives of export control are achieved effectively.

The purpose of the national general export authorisation is to facilitate exports

A national general export authorisation allows companies to export certain dual-use items simply by

notifying the Ministry for Foreign Affairs. This is possible when a company is exporting items on the national control list to countries listed in the national general export authorisation. The exporter must report such exports to the Ministry for Foreign Affairs within 30 days from the date on which the first export took place.

More information on the national general export authorisation and on the terms of its use is available on the Foreign Ministry's website at um.fi/applying-for-export-authorisation.

Companies must submit a notification if they suspect that items will end up in any prohibited end-use

The new Act retains notification obligations that apply to exporters and brokers if they suspect that the items to be exported will end up in any prohibited use. The scope of the notification obligations has been slightly extended compared to the previous act, and exporters and brokers should re-familiarise themselves with the exact contents of the obligations.

The meaning of the phrase 'reason to suspect' must be assessed on a case-by-case basis. Generally speaking, a company must have a concrete suspicion for the conditions in section 5 to be met. However, the threshold for when a suspicion becomes concrete is relatively high.

Companies do not need to define the concept of 'national security' for the purposes of end-use control

The Ministry for Foreign Affairs may make items subject to authorisation on the grounds of ensuring public or national security even if the items are not listed in the Annex to the EU Regulation or in the Annex to the national

Act. The Government Proposal for the Act (47/2024) contains definitions of the concepts 'public security' and 'national security'. However, companies themselves do not have to decide when such end-use control will be introduced. The Ministry for Foreign Affairs will issue a company with a decision eligible for appeal if it intends to introduce end-use control on these grounds.

Companies must report their exports to the Ministry for Foreign Affairs in some circumstances

Users of global export authorisations must report their exports to the Ministry for Foreign Affairs. The EU Regulation requires that exporters keep detailed registers or records of their exports, and the obligations laid down in the national Act apply to the information contained in these registers or records. It is important for the Ministry for Foreign Affairs to receive consistent information from companies on exports subject to global export authorisations. Users of global export authorisations must also implement an internal compliance programme (ICP).

Further information and guidance

The Export Control Unit of the Ministry for Foreign Affairs is the authority responsible for issuing export authorisations for dual-use items and helping companies in all matters related to the export control of dual-use items. Export control requires collaboration between exporters and the Ministry for Foreign Affairs.

A range of instructions is available on the Export Control Unit's website at um.fi/export-control-guidelines-for-companies, for example, instructions on how to apply for an export authorisation.

If the export destination is a country subject to sanctions, the company must also familiarise itself with the EU sanctions regulations. As a rule, responsibility for complying with sanctions lies with the company. The Unit for Sanctions of the Ministry for Foreign Affairs advises on matters related to sanctions and more information is available at um.fi/international-sanctions

National Act on the Export Control of Dual-Use Items (500/2024) is available at finlex.fi/en/laki/kaannokset/2024/en20240500

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 is available at eur-lex.europa.eu/eli/reg/2021/821.

Guidelines by European Commission on exporting dual-use items is available at policy.trade.ec.europa.eu/help-exporters-and-importers/exporting-dual-use-items_en.

These guidelines provide a general overview on the legislation in force at the time of their publication. Companies must familiarise themselves with the national and EU legislation governing the export of dual-use items.