

## General Licenses / Global Licenses / ICP- Requirements

### Current European practice and policy

Update Conference on Export Controls and Policy

Washington, July 2014

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<http://www.bafa.de/>

## Agenda

- EU System and Member States
- General Licenses - Benefits
- Global Licenses
- The Need for Internal Compliance Programs
- Legal Requirements Applying to an ICP – Germany and EU
- ICP Criteria
- Official ICP Audits

## EU System and Member States

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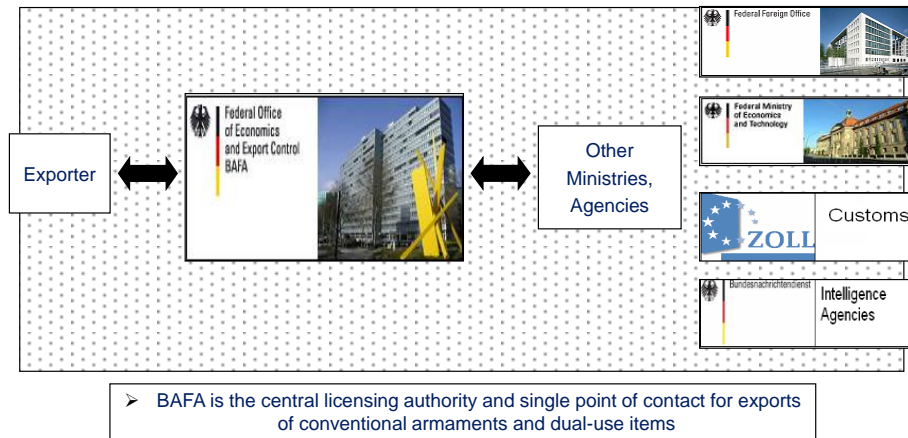
## BAFA - Areas of Expertise



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## BAFA - Main Departments in the German Licensing Process



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## Export Control

### Policy

- Security must not be threatened by wrongful accumulation of conventional weapons or weapons of mass destruction.
- Sensitive goods and know-how must not be delivered to crisis areas.
- Goods and know-how should not be used for internal repression or other severe human rights violations.
- International commitment requires not to burden the foreign relations by critical transactions in foreign trade.
- In deciding whether or not to grant an export authorisation the Member States shall take into account all relevant considerations including:
  - the obligations and commitments they have each accepted as members of the relevant international non-proliferation regimes and export control arrangements,
  - their obligations under sanctions
  - considerations about intended end use and the risk of diversion

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## Control of Goods

- **Military equipment:**  
is subject to comprehensive control system. List of military equipment is harmonized within EU basing on decisions of Wassenaar Arrangement and implemented by EU Member States.
- **Dual-use items:**  
i.e. goods usable for civil or military purposes are subject to control if they are explicitly mentioned in the relevant list of dual-use items. Lists of dual-use items – agreed upon in international regimes, compiled by the EU Commission and put into practice in cooperation with EU Parliament, legally valid in each EU Member State.
- **Non-listed goods:**  
are subject to control depending on their enduse.
- **Different goods:**  
are subject to control on the basis of embargo decisions adopted by international organization, e. g. United Nations or European Union.

## EC Dual-Use Export Control Regulation

- EU regulates on dual-use-items only. Armaments remain national matter.
- The EU is a single market. (Almost) all intra-community transfers of dual-use items are free.
- EU-wide Regulation for dual-use items. Binding and applicable in all 28 EU Member States.
- Member States are responsible for implementation and administrative procedures.
- EU allows national add-ons. Some Member States have additional national license requirements.
- Member States take final decision as to whether to grant or deny a license
- Member States have the right to offer simplified procedures e.g. **general licenses or global licenses.**

## EC Dual-Use Regulation 428 / 2009 Annex I = EU Control List

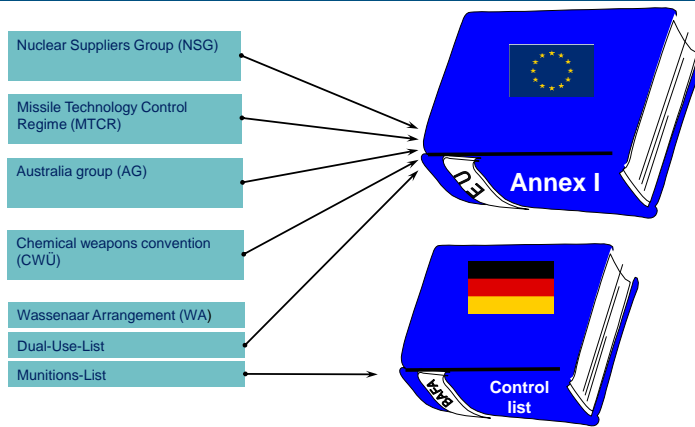


- Common List of dual-use items that are subject to control
- Consolidated list: includes all international obligations and commitments (NSG, MTCR, AG, WA etc.)

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## EC Dual-Use Export Control Regulation



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## The EC Dual-Use Regulation 428 / 2009 Annex II = Community General Export Authorization (CGEA)

L11820	[EN]	Official Journal of the European Communities	30.1.2009
<b>ANNEX II</b>			
<b>COMMUNITY GENERAL EXPORT AUTHORIZATION No EGEM</b>			
<b>(REFERRED BY ANNEX II)</b>			
Issuing authority: European Community			
<b>Part 1</b>			
This export authorization covers the following items:			
All dual-use items specified in any entry in Annex I of the present Regulation except those listed in Part 2 below.			
<b>Part 2</b>			
all items specified in Annex IV			
- 1A100 automated ground control system components designed for space launch vehicles specified in Annex IV			
- 7E104 "technology" for the integration of the flight control, guidance, and computer data into a flight management system for turbofan engines			
- 8A004 Hybrid rocket propulsion systems with total impulse capacity exceeding 1.1 MNs			
- 8A117 Dropping mechanisms, separation mechanisms, and interstages, capable to separate			
<b>Part 3</b>			
This export authorization is valid throughout the Community for exports to the following destinations:			
Australia			
Canada			
Czech Republic			
Hungary			
New Zealand			
Norway			
Switzerland			
United States of America			
<small>Note: Parts 2 and 3 may be amended only in conformity with the relevant obligations and commitments that each Member State has assumed as a member of the international non-proliferation regime and in accordance with the relevant obligations, and in conformity with the primary security interests of each Member State as reflected in its responsibility for deciding on applications for export authorizations to export dual-use items under Article 4(2) of this Regulation.</small>			

➤ General License under which (almost) all dual-use-items can be exported to

Australia, Canada, Japan, New Zealand, Norway, Switzerland, Norway **and the United States**

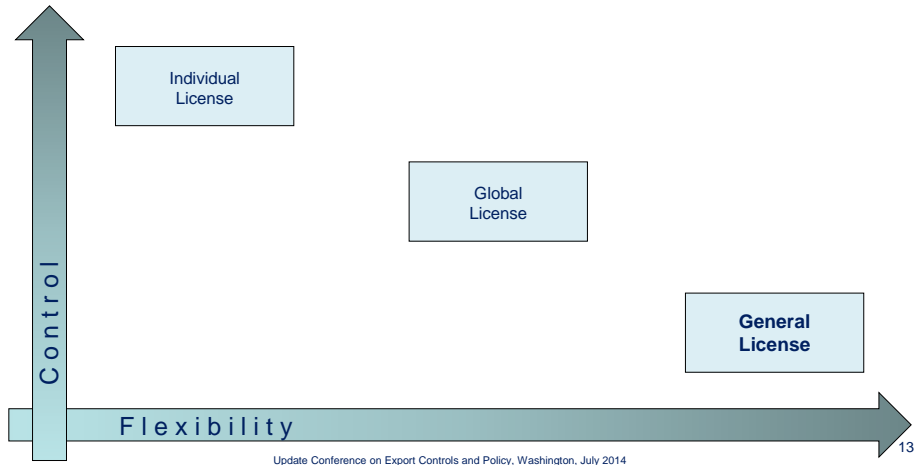
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## General Licenses – Benefits

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## Types of Licenses / Overview



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## General License – Overview – Dual-Use

### General Licenses - European -

EU 001	Annex I, EC Reg 428/2009
EU 002	Specific dual-use goods
EU 003	Repair / maintenance
EU 004	Temporary exports / exhibitions
EU 005	Telecommunication
EU 006	Chemicals

### General Licenses - National -

No. 9	Graphite
No. 10	Computer
No. 12	Low value shipment
No. 13	Special cases
No. 16	Telecommunication

## General License – Overview – Military Items

### General licenses - National -

No. 18 Equipment (0017)
No. 19 Vehicles (0006)
No. 20 Brokering
No. 21 Protection equipment (0007)
No. 23 Reexport inside EU
No. 24 Temporary exports inside EU
No. 25 Special cases

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## General License – Structure (1)

**Part 1:** “This export authorization covers the following items.....”

items:

„positive“ = the following items... or „negative“ = all items except the following....

**Part 2:** “This export authorization is valid throughout the Community for exports to the following destinations.....”

final destination:

„positive“ = permitted are the following... or „negative“ = worldwide except the following...

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## General License – Structure (2)

### Part 3: “Conditions and requirements ”

- Exporters shall notify the competent authorities of the Member State of their first use of the General License no later than 30 days after the date when the first export took place.
- Reporting requirements and the additional information that the Member State from which the export is made might require on items exported under general licenses are defined by Member States.

## General License – Structure (3)

### Part 3: “Conditions and requirements”

The General License may **not** be used 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, or **if the exporter is aware that the items in question are intended for such use;**

## General License – Structure (3)

### Part 3: “Conditions and requirements”

The General License may **not** be used 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 for a **military end use in a country subject to an arms embargo**, decided by a common position or joint action adopted by the Council or a decision of the OSCE or an arms embargo imposed by a binding resolution of the Security Council of the United Nations, or **if the exporter is aware that the items in question are intended for the above mentioned uses**;
- the relevant items are exported to a **customs free zone or free warehouse** which is located in a destination covered by the general license.

## What is a General License – Summary - general

- A General License allows to export certain listed items to certain destinations under stated conditions. *(Individual licenses are granted by national authorities to one exporter and cover exports of one or more items to one end-user or consignee in a country)*
- These items are subject to the EC Regulation 428/2009 or national export control law. They would otherwise need a single individual license.
- These exports are not free - still subject to approval - but exporters could use a simplified procedure. A General License could be used by every exporter established inside the EU.
- A General License is published in the official EU journal or national law gazette. The duration, conditions etc. are mentioned in the publication.
- A General License could be revoked in general or toward a specific company. The items, countries, conditions etc. of every General License could be changed at any time (a new publication is necessary).

## What is a General License – Summary for exporters

- Make sure the transaction requires a license (if and where the item is listed, enduse, final destination) before reviewing a General License.
- Before going to a specific General License make sure there are no general restrictions (embargo etc.).
- Each General License is structured in the same way but unique, make sure you meet all of the criteria, especially the conditions and requirements.
- There are currently 6 EU General licenses in place. France, Germany, Greece, Italy, Netherlands and UK have national General Licenses as well.
- Information:  
European Commission: <http://eur-lex.europa.eu/homepage>  
UK: <https://www.gov.uk/government/collections/open-general-export-licences-ogels>  
BAFA: <http://www.ausfuhrkontrolle.info/ausfuhrkontrolle/de/verfahrenserleichterungen>

## What are the Benefits?

- Exporter knows, that a (general) license is already granted.
- As long as the General License is valid and all conditions etc. are fulfilled all exports are possible – “planning reliability”.
- No (time consuming) authorization procedure; no enduse / enduser statements.
  
- Allows US to anticipate, whether a (re)export from a EU Member State to a third country (mentioned in the relevant General License) is possible (without authorization procedure in the EU MS).
- Allows US companies (importer) to anticipate, whether they can receive items (mentioned in the relevant General License) without any authorization procedure in the EU MS (without bureaucratic delay).
- Most simplified procedure e. g. exchange of items inside a company (with subsidiaries inside the EU).
- Methodically “comparable” with a US “License Exception” – not the content.

## Global Licenses

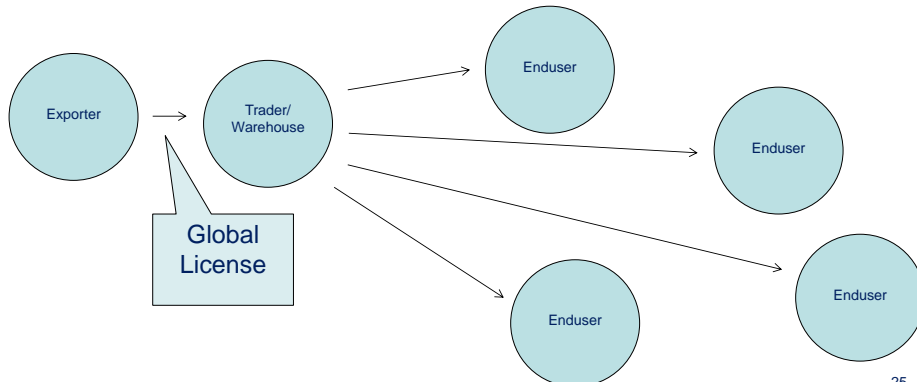
<http://www.bafa.de/>

## Global Export License

- Global export licenses offer significant benefits over the individual application process
- Main scenarios:
  - Exports in the framework of interstate agreements on arms projects
  - Dual-use exports to warehouses or traders
- Only granted to especially reliable companies
- BAFA checks the ICP of the applying company before granting a global export license
- Audits of the ICP are carried out at regular intervals during the validity period of the global license
- Key focus is the company's IT system (here: mandatory requirement)

## Global Export License

### „Trader cases“



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## Legal Requirements Applying to an ICP – Germany

## The Need for Internal Compliance Programs

### An effective Internal Compliance Program ICP can help...

- ... to fight Proliferation of WMD
- ... protect the company's reputation, as well as that of the industry and country by reducing the risk of involvement in an export control scandal
- ... enhance international trade by making it more secure
- ... ensure adherence to laws and reduce the risk of violations and penalties
- ... take advantage of simplified procedures that allow more flexibility and reduce costs can reduce costs
- ... increase organizational efficiency and save companies trouble, time and money

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## Legal Requirements - Germany

### Organizational duties

- The **German Administrative Offence Act** fines the negligence of supervision duties of the proprietor or CEO.
- To meet his supervision duties the proprietor or CEO ought to set up an appropriate control system that allows to comply with laws and regulations.
- Prevailing case law identified the following ICP-Elements:
  - **Selection of staff**
  - **Staff training**
  - **Organizational structure**
  - **Supervision**

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## Legal Requirements - Germany

### Reliability

- **Sec. 3 (2) Foreign Trade and Payments Act (AWG):**  
“The granting of licenses may be made dependent on material or personal conditions, in particular on the [reliability of the applicant](#). (...)”
- In accordance with:  
**‘Principles of the Federal Government for evaluating the reliability of exporters’**, according to which the granting of an export license may be made dependent on the [reliability of the exporter](#)

## Legal Requirements - Germany

### Reliability

- Basically, companies with a product range that includes listed products must appoint a [Chief Export Control Officer \(CECO\)](#) and notify BAFA of this person's details.
- This applies to all applications for the export/transfer of goods that are included in the munitions and dual-use control lists.
- The CECO must officially [declare his accountability](#) for an effective ICP to BAFA to be able of filing applications.
- For holders of [Global Licenses](#) BAFA checks whether the ICP is adequate, proportionate and effective.

## Legal Requirements - Germany

### Certification of military system integrators

- In accordance with the EU directive on defense-related products
- Aim: facilitation of Intra-EU-Transfers of military items
- BAFA regularly checks, ideally, once a year and, at least, every three years, whether the recipient fulfills the ICP criteria outlined in Article 9 (2) of the directive on defense-related products as well as the conditions outlined in Article 9 (4) of the directive relating to the certificate

## Legal Requirements - Germany

### In case of non-compliance

- Penalties
- Fines for CECO and/or Company
- Forfeiture of assets
- BAFA can call for replacement of the CECO
- No further licenses may be granted;  
existing licenses (individual, global, general) may be revoked
- Privileged customs procedures may be revoked



## Legal Requirements Applying to an ICP – EU

<http://www.bafa.de/>

## Legal Requirements - EU

### Article 12 COUNCIL REGULATION (EC) No 428/2009 (Dual-use items)

“... , when assessing an application for a global export authorization Member States shall take into consideration the application by the exporter of proportionate and adequate means and procedures to ensure compliance with the provisions and objectives of this Regulation and with the terms and conditions of the authorization”

### Article 9 DIRECTIVE 2009/43/EC of 06.05.2009 simplifying terms and conditions of transfers of defense-related products within the Community

“The certification shall establish the reliability of the recipient undertaking, in particular as regards its capacity to observe export limitations of defense-related products received under a transfer license from another Member State. Reliability shall be assessed according to the following criteria: ...“

## ICP criteria

<http://www.bafa.de/>

## ICP Criteria

**There is no standard template for an ICP**

Each company has to develop its own based on:

- 1. The size of the company**
- 2. The resources available**
- 3. The business sectors it is involved in**

The following criteria have to be implemented:

## ICP Criteria

### 1) Human and technical resources allocated to the management of exports

- Sufficient manpower/export control unit may consist of one person or an entire team
- Employees responsible for export control have to be reliable and special trained
- No mandatory requirements about technical resources/IT solution required for Global License
- Legislative texts, trade journals, commentaries, company manuals, company's commitment to export control

### 2) Organizational structure/ chain of responsibility

- German exporters of listed items have to nominate a Chief Export Control Officer CECO
- Assign responsibilities for export control and provide those employees with decision-making power (important to avoid conflicts of interest)/create an organisational chart showing the lines and areas of responsibility for export control

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## ICP Criteria

### 3) Audits/ Supervision

- An effective ICP must include control mechanisms
- Process-related controls ("four eyes" principle of dual controls, random sample checks)
- System controls (Involves assessing the adequacy, suitability and effectiveness of the ICP)

### 4) Workflow management/ standard operating procedures and general awareness-raising

- Operating and organizational procedures must be documented in writing → Process Manual
- Must contain instructions and guidelines of the entire process from order receipt through to final export
- Regular training and information of the export control staff
- Awareness raising to all employees that may be directly or indirectly affected

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## ICP Criteria

### 5) Physical and technical security

- Security measures should be in place to safeguard export/ transfer records and procedures, e.g. password-protected systems, firewalls, fencing around the entire ground, security at the entrance

### 6) Records and record-keeping

- Export-related documents from all phases of the application process must be retained, Sec. 17a of the Foreign Trade and Payments Ordinance, AWV
- Records must be made accessible to the competent authorities
- Individual steps involved in any checks are to be documented accurately at all stages of a project



**More:** [http://www.bafa.de/bafa/en/export\\_control/publications/export\\_control\\_icp.pdf](http://www.bafa.de/bafa/en/export_control/publications/export_control_icp.pdf)

## Official ICP audits

## Official ICP Audits

### Compliance Checks

**Germany provides for two different types  
of compliance checks**

**retrospective  
compliance checks**

**check/assessment/audit of Internal  
Compliance Programs (ICP)**

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## Official ICP Audits

### Retrospective Compliance Checks

“Did the exporter comply with the export control regulations ?”



**BAFA**

- Foreign Trade Audits
- Examination by an auditor
- Inspection of business papers and accounts
- Awareness raising / prevention
- Exposure of unknown criminal offences
- Licensing Office BAFA can take part in the audit

- Reporting obligations / general licenses
- Reporting obligations / global licenses
- Supervision of compliance with license conditions

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## Official ICP Audits

### ICP Check/Assessment/Audit

“Are the means and procedures adequate, proportionate and effective?”

**BAFA**

Reliability  
Checks  
in cases of  
non-compliance

ICP audit as  
a condition for  
global licenses

Certification  
under  
EU ICT directive

## Official ICP Audits

### ICP – Requirements for global licenses („trader-cases“)

Internal documentation  
of the  
final delivery

Secure supply chain  
management/means to  
prevent diversion

Standard ICP  
under the terms of the  
above mentioned criteria



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