



# Introduction Guide for DUAL USE

May 2020

## Introduction Guide for DUAL USE

Copyright © 2020 ExportPlanning.com

This document was written by: Valeria Minasi and Matteo Olivieri.

This work is subject to the Creative Commons Public License Attribution - NonCommercial - NoDerivs 2.5 Generic (CC BY -NC- ND 2.5) or rear.

- You are free to reproduce, distribute, publicly display, exhibit, represent and perform the work under the following conditions:

**Attribution** You must attribute the work in the manner specified by the author or anyone to whom has been given in this license: this case is ExportPlanning.com.

**Non-commercial** You cannot use this work for commercial purposes.

**No Derivative Works** You cannot alter, transform, or build upon this work.

- Each time you use or distribute this work, it must be done in accordance with the terms of this license, which must be communicated clearly.
- In any case, you may agree with the owner of the copyright (ExportPlanning.com) an usage of this work as an exception to the present license.

Trade names, logos and trademarks belong to their respective owners.

# Table of Contents

<b>Presentation</b>	<b>3</b>
<b>Procedures for checking whether an exported product is dual use</b>	<b>4</b>
Destination of use . . . . .	4
Construction or Design Specifications . . . . .	4
<b>Regulatory framework for EU exporters</b>	<b>5</b>
EU Regulation 428/09 . . . . .	5
General EU Authorization . . . . .	5
<b>Conclusions</b>	<b>7</b>

# Presentation

By the term **dual use** are identified *those goods and technologies which, although mainly used for civilian purposes, can be used in the manufacture and development of different types of armaments.*

The export of **dual use** goods and technologies is governed by a variety of regulations and procedures that meet national and international security requirements.

Exporting goods potentially **dual use** without appropriate and correct authorizations may involve not only heavy fines, but also criminal charges and the application of a series of disqualification measures for the exporting company.

For this reason it is of fundamental importance to have adequate knowledge of the discipline of these products, which do not belong to a single category, but rather range from machinery and equipment to software, involving a variety of product sectors.

This document contains a brief guide to the regulations governing the export from EU of **dual use** items.

# Procedures for checking whether an exported product is dual use

In order to understand if a product is dual it is necessary to evaluate:

1. **destination of use** of the product;
2. **construction or design features** identified by legislation.

## Destination of use

It should be verified that the persons involved in the transaction (end user, recipient, intermediaries) are not on the list of "prohibited" persons. There are in fact European and US lists of people suspected of being involved in terrorism, to whom it is forbidden to sell anything. Italian companies are required to observe the European lists, but if they have sensitive interests in the US (a *branch*, for example) they must also check the US lists to avoid US punitive measures:

**EU Lists** : <https://bit.ly/2ZMcQbx>;

**US Lists** : <https://bit.ly/2B28pPB>.

## Construction or Design Specifications

From the website of the Customs Agency you can do a preliminary check to ascertain that the

product in question is not potentially **dual use**.

**Please Note:** since in the legislation the goods are not listed according to the customs code, but according to different codes (**dual use codes**), it is necessary to identify the corresponding dual use codes and verify which are the technical characteristics such that the goods are to be considered dual use.

Once the dual use code corresponding to the Customs Code has been identified, it is necessary to read what the dual use legislation provides for that specific code: if the goods to be exported have the same characteristics as those provided for by the dual use legislation, then it is necessary to apply for the export authorization.

In this case it will be appropriate to deepen the analysis of the technical specifications of your product in order to exclude it from the dual use checklist.

In case the export is handled by a purely commercial company (trading company), not responsible for the manufacture of the exported goods, it will be the responsibility of the same to inquire with its supplier about the free exportability of the goods, possibly requiring a declaration signed by the legal representative of the supplier company.

The same behaviour will have to be held by a company that produces goods whose main components are purchased from third party companies and could be dual use. In this case, it is in fact appropriate to ask suppliers for exemption declarations to be kept on file in case of any disputes.

# Regulatory framework for EU exporters

Legislation on the export of dual-use goods originates in international arms non-proliferation treaties. On the basis of these treaties, acceding states have enacted export control regulations for arms and dual-use items and have issued embargoes against states that have violated the precepts of these treaties. In the EU, the legislation governing the export of dual-use items is defined by **EU Regulation 428/09** updated by Reg. 2268 of 26 September 2017, which is of a substantial nature and provides a general framework on the legislation establishing which items are dual-use and which transactions should be subject to prior control.

## EU Regulation 428/09

EU Regulation 428/09<sup>1</sup> establishes, first of all, in a generic way, what a dual-use item is; in fact, Art. 2 paragraph 1 states that "*dual-use products are those goods, including software and technology, which can have both civil and military use; they include all goods which can have both a non-explosive use and some use in the manufacture of nuclear weapons or other nuclear explosive devices*".

Annex I lists, by technical descriptions, all items considered to be dual-use items. The items listed in Annex I are divided into ten categories, numbered from 0 to 9, according to the following breakdown:

**Category 0** - Nuclear materials, installations and equipment;

**Category 1** - Special materials and equipment;

**Category 2** - Treatment and processing of materials;

**Category 3** - Electronic materials;

**Category 4** - Calculators;

**Category 5** - Telecommunications and information security;

**Category 6** - Sensors and lasers;

**Category 7** - Avionics and navigation equipment;

**Category 8** - Naval equipment;

**Category 9** - Aerospace material and propulsion.

In addition to these categories there are subcategories in which a literal code identifies the particular type of goods indicated in Annex I:

**A** - Systems, equipment and components;

**B** - Testing, inspection and production equipment;

**C** - Materials;

**D** - Software;

**E** - Technology.

## General EU Authorization

EU Regulation 428/09 provides for a general authorization for the export of all dual-use items with certain exceptions provided for in Annex II of the Regulation, to certain specific countries (Australia, Canada, Japan, New Zealand, Norway, Switzerland, United States of America).

To export to these countries, it is sufficient to submit an application to the Ministry stating that it wishes to use this general authorisation and, once obtained,

<sup>1</sup>See the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R0428&from=EN>.

the exporter is only required to submit to the competent authority, within thirty days of the end of each six-month period, a summary list of the operations carried out.

# Conclusions

EU companies exporting goods with a possible dual character should carry out a careful analysis of their products and their possible correspondence with those listed in EU Regulation 428/2009.

The above analysis should be carried out for all products because there may be some products which, apparently, are not dual-use but which, in fact, can be used in the field of war.

The analysis must be carried out in advance of the conclusion of sales contracts with foreign customers, since the possible authorization process could delay the shipment by several months, which could constitute a possible breach of contract.

If the export control regulations are not respected, also due to the negligence of the operator, it may incur heavy penalties of a criminal nature.

Operators need to stay up to date on the issue as it is constantly evolving.

In fact, about every year, Annex I of EU Regulation 428/09 containing the goods considered dual-use is updated.