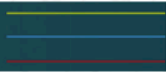


EU export/trade control framework and new ESARDA activities

Pr. Dr. Quentin MICHEL

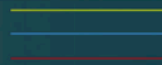
ESARDA, Luxembourg – May 22th, 2012



1. **Recent trade/export control developments** in the EU
2. **Lisbon Treaty(ies)** consequences on
 - Euratom Treaty
 - The definition of the EU nuclear policy
3. **ESARDA** Export control



Recent trade control developments in the EU



EU trade control instruments ?

EU **Legally binding specific** instruments related to trade control

- Council Regulation **428/2009**: Union regime for the control of exports, transfer, brokering and transit of dual-use items
- Council Regulations adopting **restrictive measures** (embargos) against countries or non-states actors:
 - Iran Regulation 267/2012 containing additional dual use control lists

EU trade control instruments ?

EU Legally binding non specific

instruments but related to trade control

- EU **Common Military List** - Council Common Position 2008/944/CFSP and updates
- Community **Custom Code** Reg. 2913/92 and amendments (Security, 2005)
- **EURATOM** Treaty Art.59

Council Regulation 428/2009: Essential elements

Controlling more than export :

Brokering, transit and transfer between
EU Member States

Controlling more than tangible transfers : technical assistance

Intangible Technology Transfers (ITT)

Controlling materials, equipment and
technology **listed** in Annex I

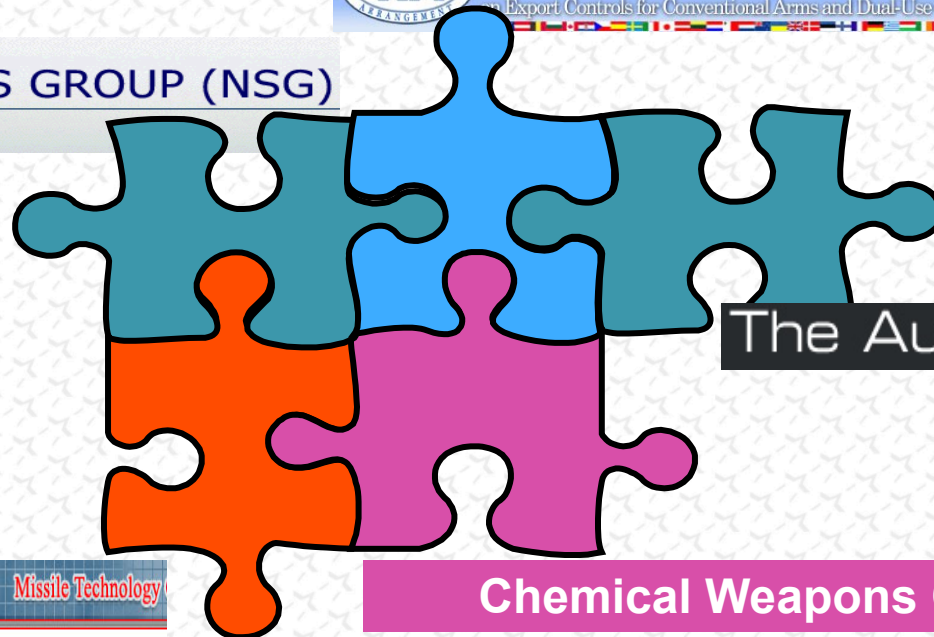
10 categories

Council Regulation 428/2009: Essential elements

Annex I is an compilation of export control lists adopted by the five international export control regimes



NUCLEAR SUPPLIERS GROUP (NSG)



The Australia Group

MTCR

Missile Technology

Chemical Weapons Convention

SYSTEMS, EQUIPMENT AND COMPONENTS

0A001 Nuclear reactors and *especially designed or prepared equipment and components therefor*

TEST, INSPECTION AND PRODUCTION EQUIPMENT

0B001 Plants for the **separation of isotopes of natural uranium**, depleted uranium: gas-centrifuge, laser LIS, EMIS, diffusion, ...

0B002 Auxiliary systems for isotope separation plants

0B003 Plants for **conversion** of uranium

0B004 Plants for **heavy water** production

0B005 Plants for nuclear reactor **fuel element** fabrication

0B006 Plants for the **reprocessing** of irradiated fuel elements (□)

0B007 Plants for the **conversion** of plutonium

The Nuclear Suppliers Group has started a 3-year-long “fundamental review” of both *Trigger List* (> Category 0) and *Dual-use list*

Expected completion in 2013.



Category 0 „Nuclear Materials, Facilities and Equipment“

MATERIALS

- 0C001 “Natural uranium”, “depleted uranium”, thorium in the form of metal, alloy, chemical compound, or concentrate and any other material containing them
- 0C002 “Special fissile materials”
- 0C003 Deuterium, heavy water and other compounds of deuterium, and mixtures and solutions
- 0C004 Graphite, nuclear grade
- 0C005 Specially prepared compounds or powders for gaseous diffusion barriers

SOFTWARE

- 0D001 “Software” specially designed or modified for the development, “production” or “use” of goods in this Category

TECHNOLOGY

- 0E001 “Technology” according to Nuclear Technology Note for the development, “production” or “use” of goods specified in this Category

Council Regulation 428/2009: Essential elements

Controlling more than listed items : catch-all clause

- Items below specifications
- Items to be controlled only for certain end-users

Establishment of information exchange procedure and of no-undercut mechanism

Avoiding licence shopping

Council Regulation 428/2009: Essential elements

Authorisation granted by national administrations

The declared end-use and end-user must be positively assessed by export administrations

Six EU General Export Authorisations are available for selected items / countries

Council Regulation 428/2009: Essential elements

intra-EU transfers require authorisations, despite the single market (Annex IV):

- Nuclear items (Category 0)
- Some dual use items (stealth technology)
- Missile controls, lithium and tritium production, chemical precursors...)

Council Regulation 428/2009: Recent news

- Annex I control list just amended (May 16) for the first time after 2009's recast
→ need for a smoother process
- Regulation targeting Iran amended (267/2012)
- Regulation targeting Syria under discussion

2. Lisbon Treaty (December 2009)

Potential impacts may concern:

- Euratom Treaty
- EU external representation
- The definition of the EU nuclear policy

Euratom Treaty: merging or marginalisation?

Adopted in 1958 and **regularly amended** to conform to the new provisions of the EC and EU treaties

- Chapters and articles regarding its institutions and decision making process have been modified
- Protocols have been added
Including the one connected to article 40.3.3 of the Constitution of Ireland : *nothing ... shall affect the application in Ireland of Article 40.3.3 of the Constitution of Ireland.*

Euratom Treaty: merging or marginalisation?

The core of the Treaty has never been
substantially reviewed

Nuclear common market, safeguards,
property and ownership, health and
safety, promotion of research

Seems to be more and more
disregarded by Member States if not
informally rejected

Euratom Treaty is a satellite treaty and
is no longer considered (informally) as
equal to the TEU/TFUEU

Euratom Treaty: merging or marginalisation?

Proposals to revise the core provisions

have been regularly tabled but did not get required consensus

Germany, Ireland, Hungary, Austria, Sweden have attached a Declaration to the Lisbon Treaty stating that the Treaty needed to be brought up to date. They therefore supported the idea of a Conference of the Representatives of the Governments of the Member States, which had to be **convened as soon as possible**

The slow dilution of the nuclear common market

Nuclear common market has been established by Chapter 9 of the Euratom Treaty to govern the free movement of certain nuclear items within Community

List A1 (nuclear material)

List A2 (material and equipment)

List B (material and equipment)

Entered rapidly into force

The slow dilution of the nuclear common market

Derogations to the **Common market** initiated with the implementation of the NPT and the necessity of CSA

- **Dublin declaration 1984** : notification system for the movements of separated plutonium and uranium enriched to more than 20 % and of heavy water components

The slow dilution of the nuclear common market

- Adoption of **the Regulation 3381/94** :
Annex IV, V and article 21
(authorisation for Dublin Declaration items)
- Adoption of the **Regulation 1334/2000** (recast by Regulation 428/2009 and amended by Regulation 1232/2011):
Annex IV part II

The slow dilution of the nuclear common market

Nuclear common market in presently **diluted in** the EU common market

Similar situation for other Treaty provisions?

- **Safeguards**, the endless question of potential IAEA duplication
- The role of the **Nuclear Supply Agency**
- Promotion of **Research**
- **External relations**

The definition of the EU nuclear policy

- The Lisbon Treaty has enhanced the role of the European Parliament in particular by the general implementation of the **ordinary legislative procedure**
- European Parliament's nuclear policy does not necessary follow the same line that the one of the Council
 - Nuclear energy, nuclear disarmament, nuclear trade

The definition of the EU nuclear policy

Marginal effect on the nuclear policies governed by Euratom

Research, investments, safeguards, property, safety are not submitted to the ordinary legislative procedure

Proposed by the Commission, decided by the Council after **consultation** with the European Parliament

Indirect consequences of policies governed by the CFSP or TFEU

But substantial consequences for nuclear common commercial policy as long as it is ruled by **TFUE**

- Article 207 TFEU has been amended in order to submit the common commercial policy to the “ordinary legislative procedure”
- Co-decision between the Council of Ministers (as it was before) and the **European Parliament**

Get a consensus on the same text in maximum three rounds (readings)

The nuclear common commercial policy

Consequences as regards the nuclear trade control regime

- Delays in annual revision of control lists

The 2009 version updating the Annex I of Regulation 428/2009 has been adopted only in May 2012

- Due to Parliament and Council internal decision making process

The nuclear common commercial policy

Commission has proposed to introduce delegated acts in order to assure a quick update of control lists of Regulation (EC) No 428/2009

The nuclear non proliferation policy ?

Most of the nuclear related policies are decided **unilaterally by Members States** and/or by the **Council** (CFSP)

Adoption of decisions supporting the NPT Review Conferences, strengthening the safeguards, requirement of the Additional Protocol as a condition of supply, 1540 Committee, IAEA (LEU) bank, fighting the nuclear weapon proliferation of certain States

The nuclear non proliferation policy

The role of European Parliament, even after the Lisbon Treaty **remains limited**. Several resolutions have been adopted or rejected :

The nuclear non proliferation policy

- European Parliament resolution of 2 February 2012 on **Iran** and its nuclear programme
- European Parliament resolution of 5 April 2011 on the efficiency and effectiveness of EU funding in the area of **decommissioning** nuclear power plants in the new Member States
- European Parliament resolution of 14 December 2010 on strengthening chemical, biological, radiological and nuclear security in the European Union – **an EU CBRN Action Plan**

The nuclear non proliferation policy

Nevertheless these policies are still **implemented by Members States, the Commission and the Council (CCP)**

- Adoption of trade restrictions against certain States (Iran, North Korea, Syria,...)
- "Non-proliferation clause" to be included in agreements with third countries

New ESARDA Export control WG

- **Forum** of different export control stake-holders: Nuclear regulators, technology suppliers, R&D, Universities, IAEA, European Commission, ad-hoc export control authorities
- **Identification** of export control related research topics



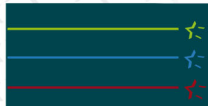
2nd EXP Sub-WG full meeting, January 24-25, 2012 - Ispra

- Over 30 participants
- Topics: Additional Protocol, intra-EU transfers, information analysis, Internal Compliance Programmes, examples of controlled technology

Next meeting September 2012, Ispra: ITT

Conclusion

- **The Lisbon Treaty** merging and marginalisation
- **Delegated Act** to the Commission
- **New ESARDA activities** on export control



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