

## **Selected issues of the public regulation of export of dual use items**

### **Abstract**

At the time this paper was written, security was a dominant theme in the international environment. The military conflict in Ukraine, terrorism in Israel and the growing antagonism of global and regional powers have made topics such as military hardware, weapons of mass destruction and international sanctions very topical. Dual-use goods are closely linked to all these security issues. It can covertly significantly increase military capabilities in the field of conventional and unconventional weapons and in the field of information. Despite the fact that it is widely used in industry and can surround us at literally every turn, it remains in the shadows of wider attention. Yet its export carries with it a number of extensive obligations for the standard-setter.

It defines dual-use goods as those products, software and 'know-how' that are usable for both civilian and military purposes. Their acquisition for the purpose of misuse is then referred to as 'proliferation'. The legal regulation of the export of such goods is specific because it is an interplay between international law and European law, which is applied by means of administrative law. By its very nature, it is complementary to international sanctions.

Two categories of dual-use goods can be distinguished. Nominal dual-use goods, which include items listed in a list drawn up by the legislator. Utilitarian dual-use goods can then be anything that, to the exporter's knowledge, is intended for misuse in connection with illegitimate weapons activities (weapons of mass destruction, illegally procured military material) or for invasion of privacy. The legislator also associates different rights and obligations with different categories of dual-use goods, including the possibility of using export licenses.

Due to the specifics of the origin and purpose of dual-use export regulation (mainly international security issues), some principles of administrative procedure are applied in a significantly modified manner when obtaining them - for example, the principle of two-instance is completely abandoned, while the principle of national and international cooperation is emphasised.

In the context of export authorisation, the Ministry of Industry and Trade must take into account a number of circumstances: the compliance of the intended export with international sanctions and embargoes, the risks of proliferation of weapons of mass destruction, the internal political and regional situation in the country of destination, the risk of supporting terrorism and the approach to human rights protection. Substantial efforts should be made to address the

risk of diversion or misuse of a particular export, while being aware of the end-users and the declared end-use.

The legislator also places certain expectations on the person of the exporter. The latter should establish an in-company export control programme (or ICP). Its focus is on assessing the transactional risks associated with exports. An integral part of this is the classification of goods. Goods classification aims to detect those items (both software and "know-how") that meet the definition of Nominal Dual Use Goods. Transaction risk assessment is applied to all exports and is capable of detecting Utilitarian Dual-Use Goods. The purpose of the ICP is to detect the riskiness of an export taking into account essentially the same criteria used by an administrative authority in deciding on an export authorisation application.

The main method of this work is a literature search. As there are not enough relevant sources on some issues in Czech or English, I also use the method of analysis based on the interpretation of legal regulations and official recommendations (soft law sources). In doing so, I apply the interpretation methods usually used in the interpretation of legislation. In addition to linguistic and logical-systematic interpretation, I place special emphasis on the use of teleological and historical interpretation. From this substrate I synthesize the conclusions which I formulate at the appropriate points.

I am convinced that this work provides a comprehensive picture of the main features of the legal regulation of dual-use exports. It is thus capable of contributing to a greater publicity of the legal regulation of dual-use exports among the professional (not necessarily legal) public. The identification of the specifics of this regulation is then also useful for improving some of the aspects that I have identified as problematic, and may also facilitate possible further professional research and publication activities. Last but not least, some passages are constructed in such a way as to provide an outline for the exporter of practical ways to meet the expectations placed in it.

**Keywords: Dual-use technology, export, proliferation of weapons of mass destruction**