

MALTA'S IMPLEMENTATION OF EXPORT CONTROL MEASURES

Delegation of Malta

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Malta has implemented the Dual-Use (Export Control) Regulations on 1 January 2002 in line with EU Council Regulation 1334/2000 and the subsequent amendments. The necessary administrative set-up is in place in order to effectively implement the dual-use regime.

In accordance with Malta's commitment to align with the EU Code of Conduct on arms export, the Military Equipment (Export Control) Regulations have also been enacted as from 1 January 2002. These regulations are being implemented in compliance with the EU Code of Conduct.

Malta participates in the principle forum for EU work at expert level in this area, the COARM Working Group within the CFSP, and also takes part in meetings between Associate Countries and the EU in the field of arms export controls. These meetings which are aimed at expanding the dialogue between the EU and Associate Countries also serve to stimulate an open exchange of ideas on present and future practises in this field.

Malta organised a regional specialised training course on Countermeasures to Combat the Illicit Trafficking of Radioactive Materials, from 8 to 11 November 1999. The course was held under the auspices of the IAEA, EU, World Customs Organisation and Interpol. The aim of the course was to train officials from the Customs Department, the Civil Protection Department and the Armed Forces of Malta to detect and respond to the illicit trafficking of radioactive materials. The course was also attended by participants from Cyprus, Greece, Turkey, Israel, Spain and Italy.

Malta's adherence to its international obligations and its willingness to co-operate with other countries to combat proliferation is further evidenced by the signature and ratification of a number of disarmament conventions and Protocols including: the Treaty on the Non-Proliferation of Nuclear Weapons, the Biological Weapons Convention, the Convention on Certain Conventional Weapons including its three Protocols, and the Chemical Weapons Convention, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction and the Comprehensive Nuclear-Test-Ban Treaty (CTBT).

Malta has continued its contacts with the Missile Technology Control Regime (MTCR). MTCR Troika delegations visited Malta in October 2000 and February 2002 for a briefing on latest developments in the field of missile proliferation and for an exchange of views on export control.

Bilateral Cooperation

Malta has continued to expand its contacts with other countries experienced in this field to enhance its export control policy and practice. One aspect, which has registered positive developments, is the provision of technical assistance mainly from the UK and USA.

A familiarisation visit to the UK by an inter-departmental team, made up of officials from the Ministries of Foreign Affairs and Economic Services and the Customs department, in November 2000 was instrumental in gaining first hand knowledge of the set-up required. At the same time this visit proved to be beneficial in formulating the measures to be taken to establish a similar mechanism in Malta adapted to reflect local considerations. A follow-up visit took place in November 2001, when the Maltese officials had the opportunity of gaining first hand experience in the processing of export licences through their visit to an export control organisation in the UK.

Malta has also benefitted from assistance received from the USA through the provision of equipment and training. As part of the ongoing Cupertino with the USA in this area, which has been rapidly progressing with each passing year, the Customs Department has recently received radiation detection equipment. A new dimension of this bilateral cooperation is related to the provision of technical assistance and expertise in the field of container tracking and risk analysis. In this connection a Containers Monitoring Unit has been established by Malta Customs within the premises of Malta Freeport to risk manage containers transshipping through Malta.

Seminars on export control, illicit trafficking of radioactive and nuclear material and transshipment enforcement on weapons of mass destruction were conducted in Malta by teams of experts from the UK and USA. These seminars were directed to officials from the Ministry for Economic Services, Customs Department, Ministry of Foreign Affairs, Armed Forces of Malta and Police.

Administrative set-up

The most important development in this field has been the setting up of a new unit within the Trade Services, Commerce Division in the Ministry for Economic Services to monitor and implement the export control regime with regard to dual-use items and military equipment. Through this set-up, the necessary mechanism is in place in order to effectively implement controls on such exports. The control basically takes the form of licences issued after adequate assurance as to end-use is provided.

The Unit is also responsible for fulfilling the obligations of other non-proliferation regimes, including the NPT, BTWC and the CWC.

Legislative Background:

The statutory instruments empowering this Unit to carry out its functions are the Dual-Use Items (Export Control) Regulations and the Military Equipment (Export Control) Regulations. These regulations have come into force on 1 January 2002.

Dual-Use Items (Export Control) Regulations

These regulations have been modeled on the European Union Council Regulation (EC) No: 1334/2000 regarding the setting up of a Community regime for the control of dual-use items and technology. The subsequent amendments to these EU Regulations (namely, Council Regulations 2889/2000 of 22 December 2000, 458/2001 of 6 March 2001, 2432/2001 of 20 November 2001 and 880/2002 of 27 May 2002) have also been transposed and included in our national legislation. The local regulations provide for the issue of export licences in connection with certain dual-use items as well as software and technology, as specified in the list compiled in compliance with the said EU Regulation.

Exports of items not included in this list would also require a licence if:

- (i) the exporter has information that the items may be used in relation to the production of chemical, biological or nuclear weapons; or
- (ii) the country of destination is subject to an arms embargo decided by the EU, OSCE or UN.

An export licence would also be required in the case of exports consisting of the transmission by electronic media of software or technology or the provision of technical assistance in connection with the production of the weapons of mass destruction referred to above.

Export licences may be of three types:

- ◇ individual – covering the export of a specified dual-use item to a specified consignee;
- ◇ global – for the export of a number of specified dual-use items to specified consignees in one or more specified countries; or
- ◇ general - the regulations provide for the granting of a National General Export Authorization, whereby, no export licences would be required for the export of the less sensitive dual-use items to Member States of the European Union, as well as to certain EU trading partners (namely, Australia, Canada, Czech Republic, Hungary, Japan, New Zealand, Norway, Poland, Switzerland and United States of America).

In applying for an export licence, exporters are bound under penalty to provide the correct information required regarding the description of the items being exported, the particulars of the consignee (and end-user) and the end use of the items. Exporters are also obliged to keep record of such

information for at least three years and to allow, if necessary, inspection of such records by any authorized public officer. In addition, exporters are bound to comply with any conditions or requirements that may be imposed in the granting of an export licence.

These regulations apply to any person, irrespective of his nationality, in Malta and to any Maltese citizen abroad.

Military Equipment (Export Control) Regulations

These regulations provide for the issue of export licences in relation to arms, weapons, ammunition, explosives, toxicological agents and other military equipment, including military vehicles, vessels of war, aircraft and electronic equipment. The draft regulations apply also to items in transit.

As in the case of the Dual-Use Items (Export Control) Regulations, exporters of military equipment are bound under penalty to provide all necessary information when applying for a licence, and to comply with any conditions or requirements imposed on the licence. In this case also, the regulations apply to all nationals in Malta, and to Maltese citizens abroad.

On the other hand, the regulations do not apply to exports of military equipment by the Armed Forces of Malta under certain special circumstances (e.g. in relation to certain military operations such as peace-keeping operations, distress and emergency situations and international military competitions) and for purposes of repair or testing of such military equipment.