



# Practical Aspects of Enforcing Controls on Intangible Transfers of Technology (ITT)

## - German Experience -

- 9th International Export Control Conference
- Dubrovnik, Croatia

## ■ Outline of the Presentation

I. Background – Legal basis

II. Compliance and Enforcement

III. Feasibility of ITT Controls

IV. Awareness Raising on ITT

V. Ex-Post Controls

VI. Conclusion

## I. Background

- Increasing practical relevance of intangible transfers of technology
- Limiting the Control to tangible objects is an anachronism
- The Type of transfer cannot be decisive for the degree of Control

## Intangible Technology Transfer - Ways to transfer technology

Tangible technology

Intangible know how

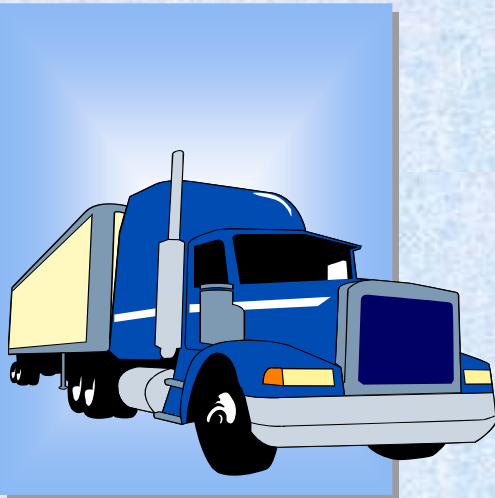
Intangible service

Tangible export/transfer

Intangible export/transfer  
e.g.: via e-Mail,  
fax, telephone

Oral technical assistance

Manual technical assistance



Art. 2b iii EC-Reg.  
§ 4 para. 2 n° 4 AWG



National implementation  
of 2000/401/CFSP

## Intangible Transfer of Technology - Definition of Export

### Community Law

(Art. 2 iii EC Reg. 1334 /2000)

Export shall mean:

i.....

ii.....

iii. Transmission of software or technology by electronic media, fax or telephone to a destination outside the Community.

### National Law

(§ 4 para. 2 n° 4 AWG)

Export:

The departure of objects, goods..., including the intangible transmission of data processing programmes and technology by data transmission or telecommunications,.....

## Intangible Know-How and Services (Joint Action 2000/401/CFSP)

### Definition of Technical Assistance, Art. 1

- **in connection with, e. g.:** repair, development, manufacture, assembling, testing, maintenance



- **in form of, e. g.:** instruction, training, consulting services transmission of working knowledge or skills



## Intangible know-how and services (Joint Action 2000/401/CFSP)

### Restrictions on technical assistance: Prohibition or licencing of.....

technical assistance  
in connection with

WMD,  
missiles

outside community and  
outside countries named  
in Annex II Part 3  
EC-Reg

**Art. 2**

technical  
assistance  
in connection with

conventional  
military enduse

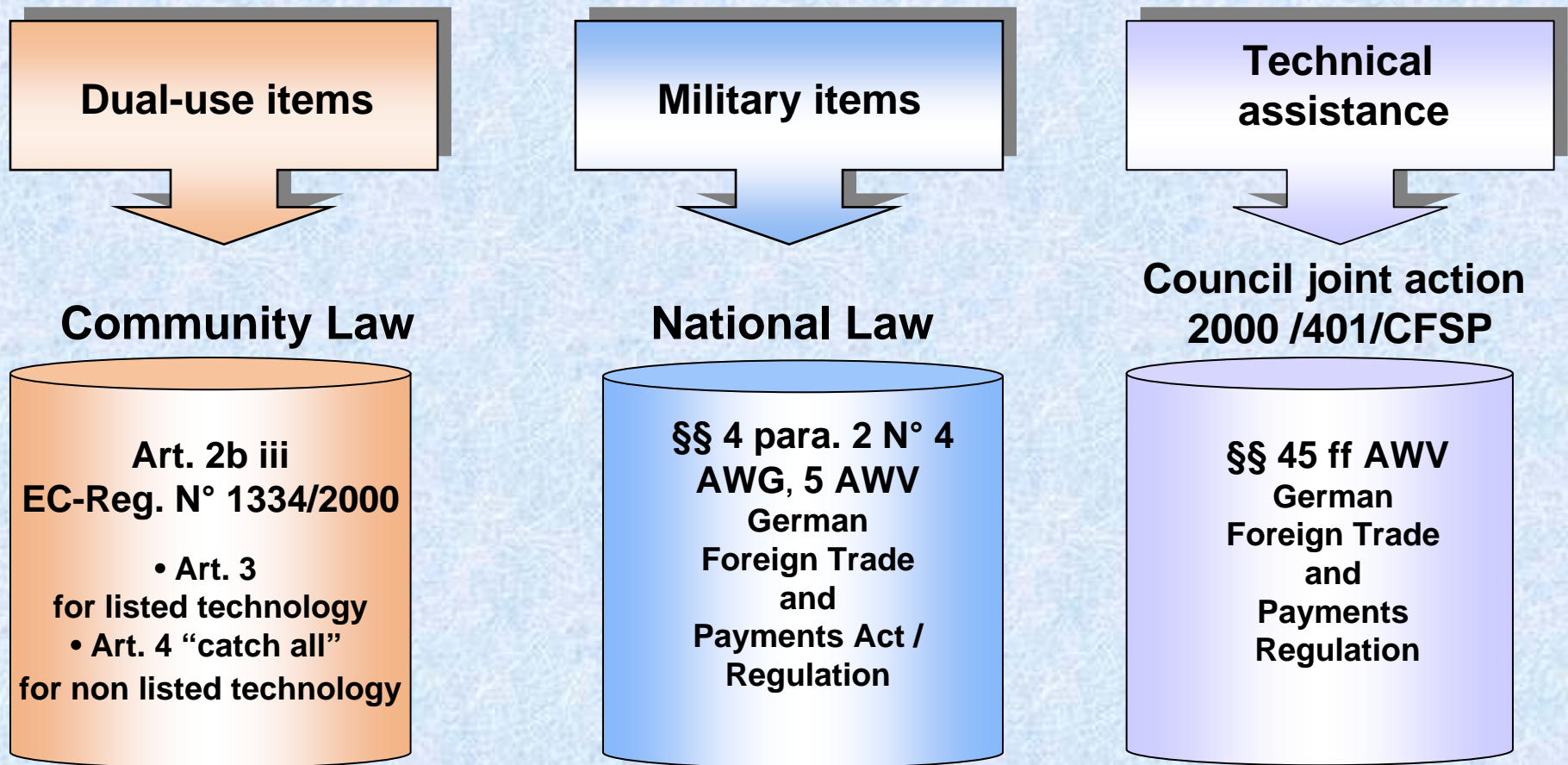
countries subject  
to an arms  
embargo  
(implementation  
optional, **Art. 3**)

**Additionally  
in-country  
transfers**

technical  
assistance  
in connection with

WMD, missiles,  
conventional  
military enduse  
inside the Member  
State

## Licensing requirements - EU/National for the Transfer of Technology in connection with



## II. Compliance and Enforcement

### Basis

- Mandatory licensing system
- AND
- effective sanctions in case of violation

### Implementation

- Licensing officers raise awareness and promote self-control by industry
- Custom authorities conduct audits of companies
- Investigation authorities investigate breaches

### III. Feasibility

- Realistic comparison with controls on tangible transfers
- Policy shift
  - away from controlling the actual transfer and
  - towards promoting voluntary compliance

## IV. Awareness raising on ITT

- Awareness about potential proliferation risks
- Advice for responsible behavior
- Industry and academia have different
  - awareness levels
  - information needs

## V. Ex-post Controls

- Regular audits
- Record keeping
- Guidelines for conducting audits

## Regular audits

audit officers require among other things:

- the necessary statutory powers
- know-how on conducting audits

### Ex-post controls

Necessary statutory powers of audit include the following:

- the right to demand information
- the duty of the auditee to supply this information
- the right to inspect business documents, use the computer network of the entity e.t.c.
- the right to enter business premises for this purpose

### Ex-post controls

Audits of companies and institutions to ensure compliance include the following:

- Audit officers should look for situations where an entity would typically transfer controlled technology by electronic means.
- If an entity is involved in intangible transfers of technology, it should be required to demonstrate that it has efficient internal compliance procedures in place.
- Customs authorities' awareness-raising and training efforts should focus on entities that are found to be significantly lacking in compliance.  
If it appears that export controls have been violated, customs authorities should inform investigation authorities.

## V. Conclusion

- Leaving ITT uncontrolled
  - opens an obvious loophole for the transfer of controlled technology
  - poses a major threat to the credibility of existing export controls on controlled technology

Thank you for your attention!

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