



The Specifics of Export Control in Ukraine

The International transfer of “dual-use” or “military” goods is subject to strict state control in Ukraine. Ukrainian legislation on the matter is based on arrangements of the Wassenaar Arrangement, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Australia Group. Nevertheless, there are local requirements that have to be complied with when providing business activities related to transferring goods from or into Ukraine.



Liability for non-compliance with export control regulations

Firstly, the violation of export control regulations in Ukraine leads to significant consequences for a company and its employees, usually the management of the company. Depending on the type of the violation, Ukrainian legislation envisages administrative and criminal liability as follows:

- penalty for the company in amount of up to 150% of the value of the military/dual-use goods¹
- penalty imposed on an individual in an amount of up to approximately USD 3,000²
- restriction of liberty or imprisonment up to 5 years, in some cases with the deprivation of the right to hold certain positions or engage in certain activities up to 3 years³.



Goods subject to export control in Ukraine

There are three main statements that should be taken to account:

1. Export control is applied not only to the export customs procedure

Any transaction between a resident and a non-resident of Ukraine on the purchase or transfer of military or dual-use goods requires obtaining of a permit or a special conclusion from the State Service of Export Control of Ukraine. Thus, compliance with export control is compulsory regardless of the customs regime used including import, export, import/export without physical crossing the borders, transit through Ukraine or re-export of manufactured products under inward processing procedure⁴. Companies have to also consider that the exemption from measures of non-tariff regulations envisaged by the Customs Code of Ukraine in certain cases, does not relieve the companies from obtaining a special permit for international transfers of military or dual-use goods.

¹ Article 25 of the Law of Ukraine “On State Control over International Transfers of Military and Dual-Use Goods”

² Article 333 of the Criminal Code of Ukraine, Article 212-4 of the Code of Ukraine on Administrative Offenses

³ Article 333 of the Criminal Code of Ukraine

⁴ Article 1 of the Law of Ukraine “On State Control over International Transfers of Military and Dual-Use Goods”



2. Goods subject to export control in Ukraine shall be specifically identified based on Ukrainian export control legislation

The Unified List of Dual-Use Goods is adopted in Ukraine based on Council Regulation (EC) No 428/2009. Regardless of using an ECCN code and similar description of dual-use goods, there still may be differences in the approach to the classification or application of the general notes to the positions. For example, the Unified List in Ukraine does not contain some ECCN codes (for example, 5A991) compared with the list in the EU. Moreover, the technical characteristics for each ECCN may differ from the requirements established in the EU. Also, the Unified list in Ukraine has not been updated since 2018 as opposed to the EU's list, which changed in 2019. Thus, for the submission of goods that are subject to export control in Ukraine, it is necessary to analyse their technical characteristics and purpose of use according to the requirements of Ukrainian legislation.

3. The subjects of export control are goods, services, works and technology related to such goods

According to the Law, the term "goods" also covers "services related to military and dual-use goods". At the same time, the definition of services related to dual-use goods is quite extensive. For example, services and works under ECCN 5E902 includes services related to the development, production, use, assembly, testing, modification and modernisation of products, equipment, materials, software and technologies related to the goods specified in ECCN 5A002, 5B002, 5D002 or 5E002. Thus, the companies shall check both, potentially "dual-use goods", as well as works with such goods, for accurate compliance with the export control.



Identification of dual-use and military goods

Ukrainian law requires that a company shall apply to the State Service of Export Control of Ukraine or an authorised expert center for a preliminary identification if there is a risk that the goods may be considered as dual-use or military ones. Only these organisations are entitled to confirm that the goods are subject to export control, and a company cannot do so independently. If the Company has any doubts regarding "dual-use goods" based on technical characteristics and purpose of use - it has to contact the competent authority.

However, for this, a company must regularly control and in a timely manner identify goods that may potentially be subject to export control. A good practice includes establishing a separate department responsible for the check, oversight and periodic review of the list of the goods. Alternatively, an outsourcing company could be engaged specializing in export control review in Ukraine. Such control will help to ensure compliance with the rules for export control in Ukraine, request for a permission/preliminary identification beforehand and mitigate risks of imposing administrative and criminal liability for violation of the rules. Thus, before entering the contract on the transfer of goods or services from or to Ukraine a company shall verify if such goods or services fall under export control. For this, it is recommended to engage experts with a thorough knowledge of Ukrainian legislation on export control and practical experience of working with the State Service of Export Control of Ukraine and other related authorities.