

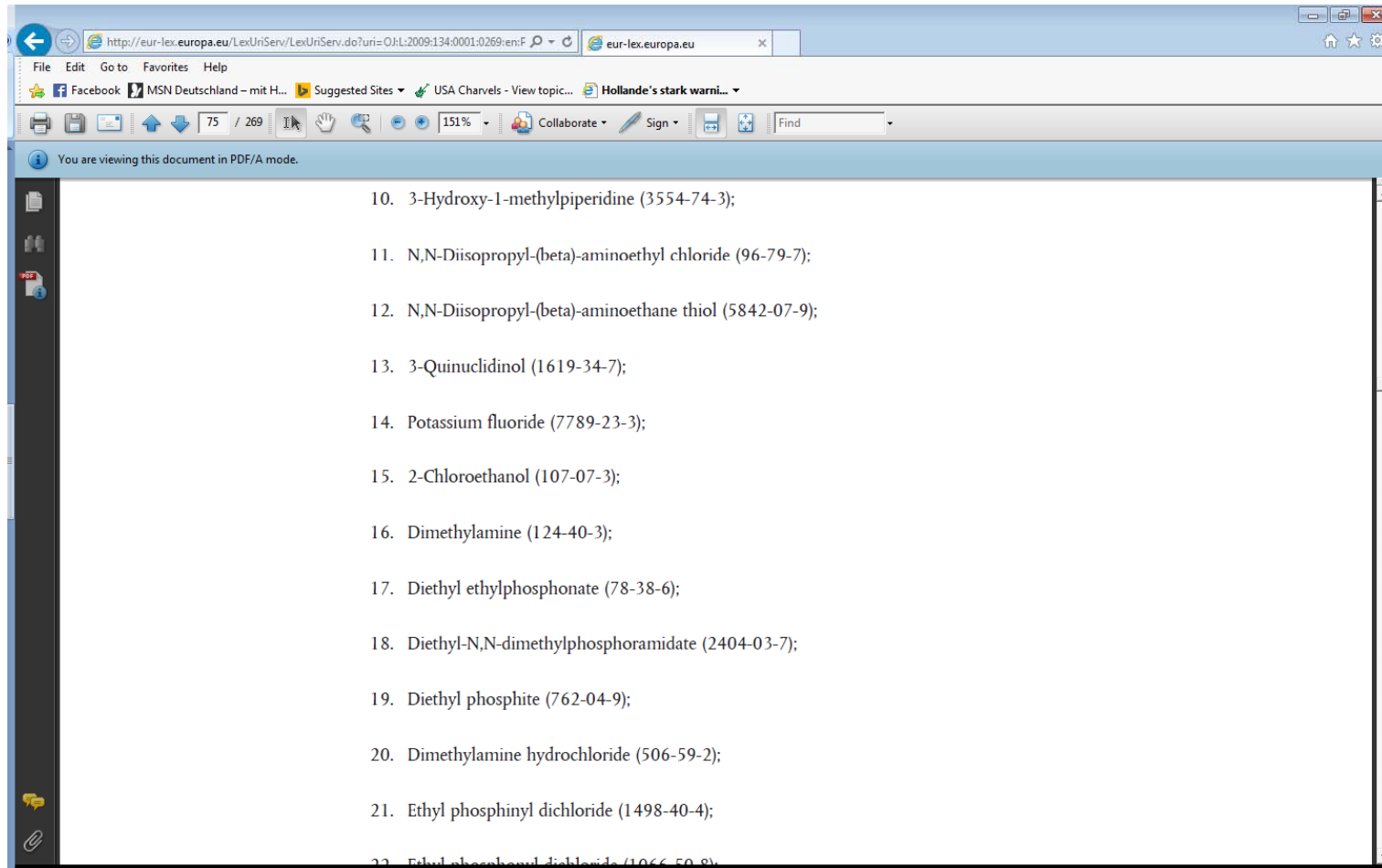
Dual Use Goods

Direct Link: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:134:0001:0269:en:PDF>

- from the EU website
- The trade in dual-use items – goods, software and technology that can be used for both civilian and military applications and/or can contribute to the proliferation of Weapons of Mass Destruction (WMD) – is subject to controls to prevent the risks that these items may pose for international security. The controls derive from international obligations (in particular UN Security Council Resolution 1540, the Chemical Weapons Convention and the Biological Weapons Convention) and are in line with commitments agreed upon in multilateral export control regimes.
- Sounds simple, right ?

- The EU's dual use export controls derives from the UN Security council Resolution 1540
- the EU document describing the directive including examples is 269 pages long (!)
- The examples range from high level, relative clear descriptions from "dual use items...which can be used for both civil and military purposes" to for instance 3-Hydroxy-1-Methylpiperidine which requires a high level of knowledge on the product side
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- So from the relative "simple" radarsystem which could be used for civilian as well as military purposes (or offensive to defense) to a chemical compound which is perhaps only 1 molecule away from being civilian
- Please note that not all countries have implemented the UN list (Thailand only implemented it in 2015 with the intention to enforce it being 2018)

Example products



The image shows a screenshot of a web browser window displaying a document in PDF/A mode. The browser's address bar shows the URL: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:134:0001:0269:en:F>. The browser interface includes a menu bar (File, Edit, Go to, Favorites, Help), a toolbar with various navigation and utility icons, and a status bar at the bottom. The document content is a list of 22 chemical products, each with a number and a name followed by its CAS number in parentheses. The list is as follows:

10. 3-Hydroxy-1-methylpiperidine (3554-74-3);
11. N,N-Diisopropyl-(beta)-aminoethyl chloride (96-79-7);
12. N,N-Diisopropyl-(beta)-aminoethane thiol (5842-07-9);
13. 3-Quinuclidinol (1619-34-7);
14. Potassium fluoride (7789-23-3);
15. 2-Chloroethanol (107-07-3);
16. Dimethylamine (124-40-3);
17. Diethyl ethylphosphonate (78-38-6);
18. Diethyl-N,N-dimethylphosphoramidate (2404-03-7);
19. Diethyl phosphite (762-04-9);
20. Dimethylamine hydrochloride (506-59-2);
21. Ethyl phosphinyl dichloride (1498-40-4);
22. Ethyl phosphonyl dichloride (1066-50-8);

And to make it even more complicated

62. Sodium hexafluorosilicate (16893-85-9);

63. Methylphosphonothioic dichloride (676-98-7).

Note 1: For exports to "States not Party to the Chemical Weapons Convention", 1C350 does not control "chemical mixtures" containing one or more of the chemicals specified in entries 1C350.1, .3, .5, .11, .12, .13, .17, .18, .21, .22, .26, .27, .28, .31, .32, .33, .34, .35, .36, .54, .55, .56, .57 and .63 in which no individually specified chemical constitutes more than 10 % by the weight of the mixture.

Note 2: For exports to "States Party to the Chemical Weapons Convention", 1C350 does not control "chemical mixtures" containing one or more of the chemicals specified in entries 1C350.1, .3, .5, .11, .12, .13, .17, .18, .21, .22, .26, .27, .28, .31, .32, .33, .34, .35, .36, .54, .55, .56, .57 and .63 in which no individually specified chemical constitutes more than 30 % by the weight of the mixture.

Note 3: 1C350 does not control "chemical mixtures" containing one or more of the chemicals specified in entries 1C350 .2, .6, .7, .8, .9, .10, .14, .15, .16, .19, .20, .24, .25, .30, .37, .38, .39, .40, .41, .42, .43, .44, .45, .46, .47, .48, .49, .50, .51, .52, .53, .58, .59, .60, .61 and .62 in which no individually specified chemical constitutes more than 30 % by the weight of the mixture.

Note 4: 1C350 does not control products identified as consumer goods packaged for retail sale for personal use or packaged for individual use.

1C351 Human pathogens, zoonoses and "toxins", as follows:

a. Viruses, whether natural, enhanced or modified, either in the form of "isolated live cultures" or as material including living material which has been deliberately inoculated or contaminated with such cultures, as follows:

Products listed (not comprehensive)

- Arms – arms related equipment/parts
- Software
- technology
- Chemicals
- Viruses
- Bacteria
- Toxins

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:134:0001:0269:en:F

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29.5.2009 EN Official Journal of the European Union L 134/89

2A **Systems, Equipment and Components**

N.B.: For quiet running bearings, see the Military Goods Controls.

2A001 Anti-friction bearings and bearing systems, as follows, and components therefor:

Note: 2A001 does not control balls with tolerances specified by the manufacturer in accordance with ISO 3290 as grade 5 or worse.

a. Ball bearings and solid roller bearings, having all tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 4 (or ANSI/ABMA Std 20 Tolerance Class ABEC-7 or RBEC-7, or other national equivalents), or better, and having both rings and rolling elements (ISO 5593), made from monel or beryllium;

Note: 2A001.a. does not control tapered roller bearings.

b. Other ball bearings and solid roller bearings, having all tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC-9 or RBEC-9, or other national equivalents), or better;

Note: 2A001.b. does not control tapered roller bearings.

c. Active magnetic bearing systems using any of the following:

1. Materials with flux densities of 2,0 T or greater and yield strengths greater than 414 MPa;
2. All-electromagnetic 3D homopolar bias designs for actuators; or

“identifiers” of dual use

- If you take a look at for instance the manufacturing equipment mentioned in the list , you will notice that the more precise a certain machine can produce the more likely it is such a machine would end up on the restricted list, as it for instance could be used in the production of weapons or the like
- For other products it might be even more difficult to make that distinction
- As you can imagine, the fact that something “might” be “Dual use” opens the door for a whole range of discussions and especially in case of a documentary payment can lead to delays in payment when doubt has arisen or even to legal issues in case a district attorney decides to indict on suspicion of exporting dual use goods without the proper licence.

Dual Goods, when it is clear

- Once it is established that a party wants to export a good which is branded “dual use” the exporting can apply for a export license (usually with the customs agency in the country of the exporter)
- In case of doubt such license can be refused
- When exporting to more sensitive countries requests are escalated to the ministry of foreign affairs in a particular country

- A request for a license can be done as an actual request or as “test” request just to test the waters
- The request needs to identify whether the request deals with actual goods technology or technical assistance
- If and when license is given, this will be published on a government website (with details of the exporter anonymized) the license is given for a certain tenor (latest export date)
- Please note that when a license is obtained it still might prove difficult to process your transaction through the banking system as most banks have their own policy on how to deal with dual use goods and could still refuse to process your documentary transaction on their own discretion

Casestudy 1 a relatively clear case

- **Five Individuals Indicted in a Fraud Conspiracy Involving Exports to Iran of U.S. Components Later Found in Bombs in Iraq**
- **Indictment Also Alleges Fraud Conspiracy Involving Illegal Exports of Military Antennas to Singapore and Hong Kong**
- WASHINGTON – Five individuals and four of their companies have been indicted as part of a conspiracy to defraud the United States that allegedly caused thousands of radio frequency modules to be illegally exported from the United States to Iran, at least 16 of which were later found in unexploded improvised explosive devices (IEDs) in Iraq. Some of the defendants are also charged in a fraud conspiracy involving exports of military antennas to Singapore and Hong Kong.
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- Yesterday, authorities in Singapore arrested Wong Yuh Lan (Wong), Lim Yong Nam (Nam), Lim Kow Seng (Seng), and Hia Soo Gan Benson (Hia), all citizens of Singapore, in connection with a U.S. request for extradition. The United States is seeking their extradition to stand trial in the District of Columbia. The remaining individual defendant, Hossein Larijani, is a citizen and resident of Iran who remains at large.
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- The arrests and the indictment were announced by Lisa Monaco, Assistant Attorney General for National Security; Ronald C. Machen Jr., U.S. Attorney for the District of Columbia; John Morton, Director of the Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE); Mark Giuliano, Executive Assistant Director of the FBI's National Security Branch; Eric L. Hirschhorn, Under Secretary of Commerce; and David Adelman, U.S. Ambassador to Singapore.
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- "Today's charges allege that the defendants conspired to defraud the United States and defeat our export controls by sending U.S.-origin components to Iran rather than to their stated final destination of Singapore. Ultimately, several of these components were found in unexploded improvised explosive devices in Iraq," said Assistant Attorney General Monaco. "This case underscores the continuing threat posed by Iranian procurement networks seeking to obtain U.S. technology through fraud and the importance of safeguarding that technology. I applaud the many agents, analysts and prosecutors who worked on this extensive investigation."
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- "These defendants misled U.S. companies in buying parts that they shipped to Iran and that ended up in IEDs on the battlefield in Iraq," said U.S. Attorney Machen. "This prosecution demonstrates why the U.S. Attorney's Office takes cases involving misrepresentations regarding the intended use of sensitive technology so seriously. We hope for a swift response from Singapore to our request for extradition."

Casestudy 2 perhaps not so clear

- Following an indictment in the Southern District of Texas targeting four companies and five individuals for violations of the International Emergency Economic Powers Act. The individuals, 2 Iranian-Americans, Bahram Mechanic and Tooraj Faridi, a Taiwanese citizen, and an Iranian based in Turkey are accused to shipping a number of dual-use electronic components to Iran with the required licenses from the Office of Foreign Assets Control (“OFAC”) or the Commerce Department’s Bureau of Industry and Security (“BIS”), though technically all that would be required is an OFAC license.
- According to the indictment, the defendants are accused of shipping
- microelectronics such as microcontrollers (“MCUs”) and digital signal processors (“DSPs”) as well as other equipment related to Uninterruptable Power Supply (UPS) technology.
- UPS is an electrical apparatus that provides emergency power when normal electrical power fails and, for that reason, UPSs are critical for various military systems such as naval vessels, radar arrays and air defense systems and are also crucial in the nuclear energy sector.

- Sounds serious right , what actually was exported were surge protectors, the ones you can buy at any hardware store
- Useful for the Iranian military? Maybe.
- Useful for your office building? Probably.

- The other part of the indictment
- An MCU is a small computer on an integrated circuit that contains a processor, memory, and inputs and outputs to a larger system. MCUs are widely utilized in military systems to run a pre-set sequence of actions, such as running a missile through launch and targeting. Specific attributes such as low-power consumption and high-speed processing make certain classes of MCUs well suited for weapons.
- DSPs are a specialized type of microprocessor designed to optimize digital signal processing. They are used to continuously perform complex mathematical functions on data, such as modulating an audio stream to reduce noise... Modern foreign weapon systems, such as surface-to-air missiles and cruise missiles, employ digital avionics suites to carry out their guidance profiles.

- [Atmel AT89C55WD-24PU](#) and Texas Instruments-produced [TMS320F28069PZT](#) and [TMS320F28235PGFA](#). The department of justice notes that these MCUs are classified as ECCN 3A991.a for the purposes of the Commerce Control List and require a license for export to certain countries “for anti-terrorism reasons.”
- The Indictment refers to microprocessors (“MCU’s”) and digital signal processors 4 (“DSP’s”). These products are used in **surge protectors, televisions, tape recorders, guitars, etc.** In order to use one in a missile, nuclear power plant or the like, it has to be designed for that purpose, these particular MCU’s were actually so small in power and capacity that they were compared in trying to charge a Tesla car using a single AA battery (!)
- If convicted, the US can charge a maximum 20-year term of imprisonment for each money laundering-related count, and a maximum 10-year sentence for each smuggling violation
- Other examples
- China Nuclear Industry Huaxing Construction Co., which is operated by the Chinese government, admitted it bought a paint system from PPG Industries Inc. in 2006 used to coat the inside of the nuclear reactor being built in Pakistan.

- **As a summary**, for some of the goods it is clear they might be used for both civilian as well as military goods and depending on the end-user such a products can be prohibited from being exported
- For other products it might be less clear cut and again the country of export can have an influence on whether you are allowed to export and whether a license will be issued
- Not all countries have implemented the dual use goods list however the EU has

Next compliance training

- **19 April - Bank instruments Embargo, Blacklists**
- In this presentation we are going to tell you about the payment instruments which are affected by the various Embargo's as well as the concept of "blacklists" in relation to Documentary payments as well as clean payments
- **10 May - FATCA (Foreign Account Tax Compliance Act) & Trade Based Money Laundering**
- This training will have 2 distinctive parts, US Tax (or better stated the impact of US tax on clients in Europe due to FACTA and the risk of Trade Based money laundering which risk is increasing in the last 10 years.