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## Catch-All Series: Part I

Catch-all - Aware .... Grounds for suspecting .... ? In any case, do not stay passive in export control

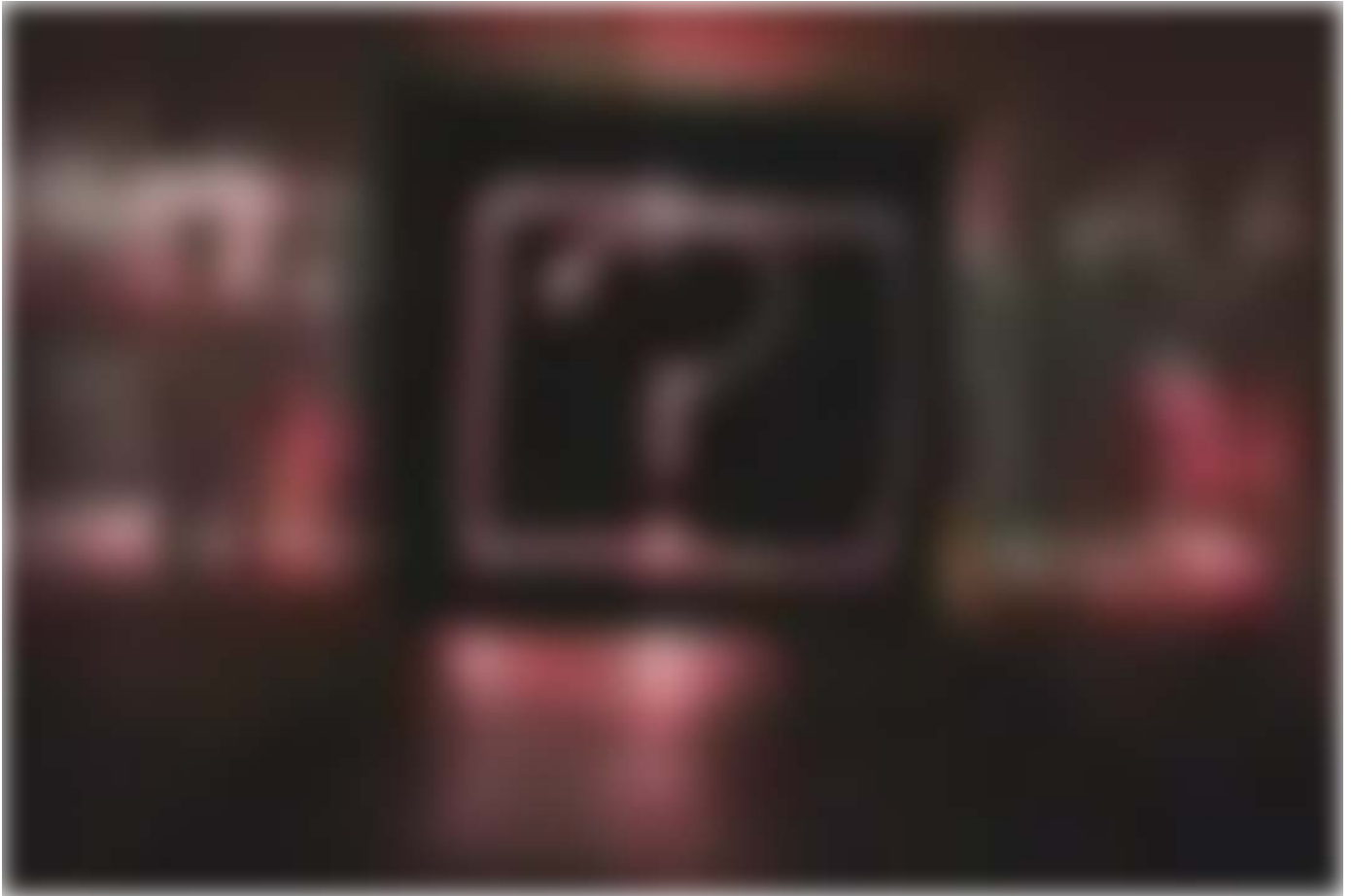


The catch-all system is an important part of the EU export control system. It complements the controls on goods listed as dual-use items or defence-related products. It is a higher-quality control on sensitive end-use.

Three preliminary remarks are important for the scope of application of the catch-all provisions, as they are currently in force in the European Union and in particular in Luxembourg, the country on which the following developments are based.

1. First, catch-all provisions are limited to non-listed items.
2. Second, the items must be intended for a critical or sensitive end-use.

3. Third, non-listed items are not automatically subject to a Government authorisation. An additional mechanism is triggering the need for a license. In almost all cases, this is the case when the competent authorities inform the exporter that a license is mandatory. In some other cases, the exporter has an obligation to assess the relationship between the item concerned and the critical / sensitive end-use and act accordingly.



In any case, if the exporter, intentionally or by negligence, omits to inform the national authorities, his responsibility could be engaged and administrative and/or criminal penalties could be applied. To engage the exporter's responsibility, the authorities will have to prove, on one hand, that the end-use is critical and, on the other hand, that the exporter was aware of these facts.

The following applies to non-listed

- dual-use items, meaning items which may be used for civil and military purposes, but are not listed in Annex I or Annex IV of EU Regulation 2021/821,
- defence-related products, meaning military equipment which are not included on the Common Military List of the European Union, which are not environmental modification techniques and which are not listed in the United Nations Register of Conventional Arms.

Not only exports are governed by the catch-all provisions. These also apply, in certain circumstances, to brokering services or technical assistance.

The challenge for exporting companies and service providers resides, first, in the awareness that such non-listed goods are subject to compliance measures and, secondly, in the adequate implementation of these compliance measures. Violations of the operator's obligations may result in an imprisonment of 5 to 10 years and/or a fine of 25,000 to 1,000,000 EUR, knowing that under Luxembourg law, not only natural persons, but also companies may also incur a criminal liability, the latter for crimes and offenses committed by their corporate bodies, directors or shadow directors in the name of, on behalf and in the interest of the company.

#### **1- There are 5 cases to consider for a proper catch-all assessment**

Catch-all provisions only apply if there is a specific technical and function relationship between the item concerned and a critical or sensitive end-use. These critical end-use situations are defined in the law and include five different cases.

Evidently, to verify if the relevant case has occurred, the operator is required to proceed by a case-by-case assessment, on the spot of the transaction.

**Case 1- The item is or may be intended, in whole or part, to contribute to the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons, or other nuclear explosive devices, or the development, production, maintenance or storage of missiles delivering such weapons**

The first case is the "proliferation" or "WMD" case.

Proliferation, under Luxembourg law, means any act that contributes to the manufacturing, acquisition development, possession, export, transshipment, transfer, brokering, storage and use of chemical, biological or nuclear weapons or other nuclear explosive devices and missiles capable of serving as a vehicle for such weapons, in infringement with an international treaty binding the Grand Duchy of Luxembourg.

The proliferation of weapons of mass destruction and their means of delivery such as ballistic missiles are a growing threat to international peace and security.

A particular difficulty with verification and export control regimes is that the materials, equipment, and know-how are dual use. One way of assessing the level of risk is to see whether there is indigenous ability to produce chemical warfare (CW) agent precursors and to weaponise chemical warfare agents.

Although effective deployment of biological weapons requires specialised scientific knowledge including the acquisition of agents for effective dissemination, the potential for the misuse of the dual-use technology and knowledge is increasing as a result of rapid developments in the life sciences. Biological weapons are particularly difficult to defend against (due to their lack of signature). Moreover, the consequence of the use maybe difficult to contain depending on the agent used and whether humans, animals, or plants are the targets. They may have particular attractions for terrorists. Biological weapons, as well as chemical weapons, pose a special threat in this respect.

**Case 2 - The export or the item affects or is likely to affect the national or external security of the Grand Duchy of Luxembourg or the safeguarding of human rights**

The assessment of this case requires a double security verification.

In Luxembourg law, "national security" is defined by independence and sovereignty of the State, security and functioning of the institutions, fundamental rights and freedoms, security of persons and property, scientific and technical potential or economic interests.

The "external security" is the security of foreign States or international or supra-national organizations which which Luxembourg pursues common objectives on the basis of an international treaty.



**Case 3 - The Buyer or destination country is subject to an EU/OSCE/UN arms embargo and the item is or may be intended, on whole or part, for a military end-use**

The assessment of this case also requires a double verification, the first one being related to arms embargo to which the buying entity of the country of destination may be subject to.

EU arms embargoes are all implemented in Luxembourg law. Information related to the embargo countries may be accessed by reading Annex 2 of the Grand Duke Regulation of 14 December 2018 on export control.

On overview of arms embargoes may be found on the [SIPRI website](#).

The second criteria is the, actual or potential, "military end-use" of the product. This means one of the following:

1. Incorporation into military items listed in the military list of EU Member States;
2. Use of production, test or analytical equipment and components therefore, for the development, production or maintenance of military items listed in the military list of EU Member States;
3. Use of any unfinished products in a plant for the production of military items listed in the military list of EU Member States.

**Case 4 - The item is or may be intended, in whole or part, for use as parts or components of defence-related products exported from Luxembourg without the required authorization**

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During the assessment of this case, the operator should consider that "exported ... without the required authorization" covers the case of an export without any license, but also the case of the export made in violation of an existing license.

**Case 5 - The item is a cyber-surveillance items which is or may be intended, in its entirety or in part, for use in connection with internal repression and/or the commission of violations of human rights and international humanitarian law**

This case has been added by the recent recast of the EU Dual-Use Regulation, resulting in Regulation 2021/821.

"Cyber-surveillance item" is defined as being a dual-use item specially designed to enable the covert surveillance of natural persons by monitoring, extracting, collecting or analysing data from information and telecommunication systems.

Risks related to cyber-surveillance items relate, in particular, to cases where such items are specially designed to enable intrusion

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