

# Emerging technologies become part of the German national export list

## An interference with the Single Market?

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The German Foreign Trade and Payments Ordinance (*Außenwirtschaftsverordnung – AWW*) establishes rules, in particular, concerning the export of weapons, armaments and goods that can be used for both civilian and military purposes (so-called dual-use items). An amendment of these national export control regulations, the 21st Ordinance amending the AWW, was adopted by the German federal government on 17 July 2024 and will enter into force shortly. Its key content is the expansion of the national dual-use items list, subjecting certain emerging technologies to unilateral export controls. Below, we provide a brief overview of the planned changes and put them into context.

### Extension of the national dual-use items list

While export controls for dual-use goods are standardised throughout the EU through Regulation (EU) 2021/821, EU Member States still have the option of subjecting additional nationally listed dual-use goods to export restrictions. In Germany, the legislator made use of this possibility by means of the Export List, Part I Section B, in which it lists several nationally controlled dual-use goods and technology.

This list is now being expanded and will in the future also subject so-called **emerging technologies** such as quantum computers or artificial intelligence (AI) to export controls. Specifically, the following goods are added to the Export List:

- Integrated cryogenic CMOS circuits (*Cryo-CMOS*),
- parametric signal amplifiers/quantum-limited amplifiers with certain structural characteristics,
- certain cryogenic cooling systems (including two-stage cryogenic pulse tube coolers),
- certain scanning electron microscopes for imaging analysis of semiconductor devices or integrated circuits,
- specific equipment for dry etching,
- certain cryogenic wafer inspection equipment and

- selected types of quantum computers, qubit components, qubit circuits, quantum control devices and quantum measurement units.

The Export List specifies in greater detail the conditions under which a product is covered. Every product that could conceivably be classified under one of the headings must therefore be carefully checked against the expanded Export List.

With the inclusion in the Export List, the export of the goods concerned to third countries is subject to the **authorisation requirement** under Section 8 (1) AWV. In addition, shipments within the European Union are also subject to an authorisation requirement pursuant to Section 11 (2) AWV if the shipper is aware that the final destination of the goods is outside the EU. This is to prevent circumvention of the national control list by allowing exporters to deliver the goods via other Member States.

In addition, the **numerical system** in Part I Section B of the Export List will be revised and changed from a five-digit to a six-digit numbering system in order to achieve better comparability of national control lists at European level.

## Context

The expansion of the Export List can certainly be viewed critically: In its White Paper on export controls, published earlier this year, the European Commission clearly expressed its **scepticism** about Member States adding further goods to their national dual-use control lists. Such unilateral action, the Commission feared, could lead to the creation of a regulatory patchwork in the medium term. Still, Germany now joins the list of Member States that have unilaterally tightened dual-use export controls, which covers, for example, the Netherlands, Spain and Lithuania as well as, most recently, Italy.

The Commission was also concerned that these developments could favour so-called “**forum shopping**” due to the fragmentation of the internal market: Third country purchasers interested in nationally listed items could switch to suppliers from countries with more favourable export control regimes in order to avoid licensing procedures. This threatens to put suppliers of key technologies from countries with stricter control standards at a competitive disadvantage. This includes companies from Germany, especially as the duration of export licence procedures at the Federal Office for Economic Affairs and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle – BAF*A) has risen sharply due to the very high number of requests in the past years. This trend is likely to continue due to an extension of the dual-use export control requirements.

According to the Federal Ministry for Economic Affairs and Climate Action, though, these risks are supposedly low in the case of emerging technologies, since these specific controls have been coordinated internationally with several countries already controlling these goods nationally or planning to introduce such controls. However, it remains to be

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seen whether this completely dispels the concerns. Instead of unilaterally and uncoordinatedly extending the export list in a selective manner, it would in any event be welcome in terms of legal policy if Germany were to advocate an early evaluation and subsequent update of the EU Dual-Use Regulation. Uniform standards in the single market appear to be better suited to respond collectively and uniformly to the export law challenges posed by new technologies across the EU.

BLOMSTEIN will continue to monitor current developments closely. If you have any further questions regarding the planned amendments to the national export list, please do not hesitate to contact [Roland M. Stein](#) or [Tobias Ackermann](#).

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