

Covid 19 and Export Control - Five points that need to be observed further on

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The outbreak of the coronavirus in Germany has a direct impact on the operational export control of companies. While some export control departments are no longer able to work at full capacity and also the Federal Office of Economics and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle - *BAFA*) had to significantly reduce its services, such as its telephone hotlines, the risk of procurement efforts by unintended recipients of goods and technology is increasing.

However, this situation does not release companies from their export control obligations. They always have to examine whether a planned export is subject to authorization or even prohibited. Therefore, it is worthwhile to observe the following five points in the next few weeks and months in order to avoid serious failures.

1. What is exported?

In particular, the export of certain dual-use goods is subject to authorization, whereby the term dual-use goods does not only cover goods but also technology and software. Therefore, it always has to be clarified whether the exported dual-use goods are listed in Annex I of the [Dual-Use Regulation](#) or the [national control list](#). Further legal provisions prohibit the export of other goods or require authorization. In particular, these include military goods listed in the export list, the [War Weapons Control Act](#), the embargo regulations, the [Anti-Torture Regulation](#) and the [Firearms Regulation](#).

The European Commission has taken [additional measures](#) in respect of the spread of the coronavirus, making the export of certain medical protective equipment also subject to authorization. This includes, inter alia, breathing masks, protective suits and gloves.

2. Where is the export to?

Embargo measures against certain countries may impose additional obligations or prohibitions on exporters. Therefore, BAFA provides an [overview of current country-specific embargoes](#), which shows the restrictions against the embargoed countries. Depending on the country of destination, the respective embargo regulation has to be scrutinized carefully, as these regulations regularly include actions that are not normally subject to export control law. Thus, for example, the [Russia embargo regulation](#) prohibits in certain cases not only the export but also the conclusion of a sales contract.

3. To whom is delivery made?

Embargoes have also been imposed on certain persons; either within the framework of the country-specific embargo regulations or as a result of the country-independent embargo measures to combat terrorism. For example, the [Iran embargo regulation](#) contains lists of persons to whom no funds or economic resources should be made available. Furthermore, the lists of anti-terrorism regulations are also important. Various software solutions and online lists enable you to screen transactions or individual names.

4. For which purpose are the goods intended to be used?

Regardless of whether a dual-use item is explicitly listed, its export may be subject to authorization or prohibited if it is intended to be used for specific purposes. These purposes include, inter alia, use related to the development, operation, maintenance or storage of chemical, biological or nuclear weapons. However, the exporter must be aware of this use or have been informed by BAFA.

Specific regulations can also be found in the embargo regulations. For example, the [Belarus embargo regulation](#) prohibits the sale, supply, transfer and export of certain equipment which might be used for internal repression.

5. Red Flags?

Especially in times in which some companies are rather willing to try out new distribution channels abroad in the face of weak domestic demand, the risk of becoming a victim of procurement attempts by unintended contractual partners is high. For this reason, the greatest possible caution is called for as soon as doubts arise about the origin or reliability of potential business partners. As soon as contact requests seem strange to you, no plausible internet presence exists, the potential purchaser is unable to provide comprehensible information on the intended use of the goods or is in state ownership, you should conduct a further in-depth scrutiny. Internet research, international company databases or inquiries to the Chamber of Industry and Commerce may help here. In case of doubt, it is recommended to refrain from conducting business rather than falling into the trap.

BLOMSTEIN will monitor and inform about further developments. If you have any questions about the potential impact on your company or industry, please do not hesitate to reach out to [Dr. Roland M. Stein](#) and [Dr. Florian Wolf](#) at any time.