

Exports from Germany: Simplified procedures for exporting controlled goods to partner countries as of September 2023

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Any company who has recently applied to the German Federal Office for Economic Affairs and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle – **BAFA**) for an export licence or any other sanctions-related enquiry has had to reckon with long processing times. To speed up these processes, BAFA has, as announced on 1 August 2023, introduced five new and amended several other general export licences (Allgemeine Genehmigungen – **AGGs**) as well as implemented further procedural changes.

These measures, detailed in this Briefing, are aimed at accelerating and rendering more efficient the licensing procedures especially for the export of certain military equipment and dual-use items to EU- and NATO-partners as well as to other partner countries of the Federal Republic of Germany. Other procedural simplifications concern, among others, Iran and the extension of the validity of certificates of non-objection (*Nullbescheide*). It is hoped that these changes, taken together, will result in a timely reduction in agency processing times.

Background to the measures

In recent months, BAFA has experienced increasingly long **processing times**. Whereas previously mostly export applications for military equipment and dual-use items destined for "critical" states were subject to longer processing times, now nearly all export applications – including those to "non-critical" states – as well as applications for negative certificates or applications for temporary exports are affected by the long processing times. This inevitably has a negative impact on the German export industry (cf. Interpellation of the parliamentary group CDU/CSU, , p. 1). As a reason to this development, the Federal Government cites in particular the new tasks and complicated examination procedures that have arisen for BAFA as a result of Russia's war against Ukraine, especially with regard to sanctions law (, p. 2).

According to the Federal Ministry for Economic Affairs and Climate Action (Bundesministerium für Wirtschaft und Klimaschutz – **BMWK**), BAFA is now facing two central challenges: On the one hand, exporters are demanding faster licensing procedures. On the other hand, the applicable export control law, including the human rights to be observed and the difficult security situation, require thorough examination procedures. In order to resolve this conflict, BMWK and BAFA have decided to no longer grant licences for deliveries to selected partner countries on a case-by-case basis, but in the form of

AGGs. These are administrative acts that are issued for a large number of cases. If an export meets the criteria of the AGG, it is approved. An individual decision is then no longer required.

For exports to third countries that are not allies or other close partners of the Federal Republic of Germany, there is still a targeted control of critical exports.

Measures concerning the export of military goods

With regard to military equipment, the following measures have been taken and will enter into force on 1 September 2023:

- Firstly, a new AGG has been issued for the export and transfer of military goods listed in Part I Section A of the Export List to EU and certain NATO member states, Australia, Japan, Korea, Liechtenstein, New Zealand and Switzerland (AGG No. 33).
- Secondly, a new AGG was issued for the export and transfer of software for military equipment already licensed and listed in Part I Section A of the Export List to EU and certain NATO member states as well as Australia, Chile, Japan, Korea, Liechtenstein, New Zealand, Singapore, Switzerland and Uruguay (AGG No. 34).
- In addition, the pre-existing AGGs No. 18 (clothing and equipment with signature suppression), No. 19 (all-terrain vehicles), No. 20 (trade and brokering services), No. 21 (protective equipment), No. 22 (explosives), No. 23 (re-export), No. 24 (temporary exports and transfers), No. 25 (special categories), No. 26 (Armed Forces), No. 27 (Certified Consignees), No. 28 (on the Arms Export Controls Agreement) and No. 32 (Protective Equipment Ukraine) have been adapted in terms of content and the scope of application and/or the group of approved destinations has been expanded.
- At the same time, the **validity** of all AGGs for military equipment is extended until 31 March 2024.

Exports of military equipment made on the basis of such an AGG must be notified to BAFA and the AGG used must be indicated in the export declaration.

Measures concerning the export or transfer of dual-use items

With regard to dual-use items, the following measures have been taken and will enter into force on 1 September 2023:

- First, a new AGG is introduced for the export of all Annex I items of the Dual-Use-Regulation to Argentina, Chile, Korea, Mexico, Singapore and Uruguay (AGG No. 37).

- Second, another AGG was issued regarding the export of software for electronic components of item 2D002 of Annex I of the Dual-Use-Regulation for the above-mentioned countries as well as for Brazil, India, Serbia, South Africa, Turkey and Ukraine (AGG No. 38).
- A third new AGG was issued for the transfer within the EU of goods listed in Part I of Annex IV to the Dual-Use-Regulation (AGG No. 39).
- Similarly, the existing AGGs No. 12 (“WGG”, for the export of certain dual-use items below a certain value limit), No. 13 (“FAG”, for the export of certain dual-use items in certain cases), No. 14 (heat exchangers, valves and pumps), No. 16 (telecommunications and information security) and No. 17 (frequency converters) are adapted and expanded in terms of content. For example, the scope of AGG No. 12 will be expanded by raising the value limit for dual-use items from €5,000 to €10,000.
- The **validity** of all AGGs for dual-use items remains unchanged until 31 March 2024.

The use of such a AGG must be indicated in the export declaration in ATLAS.

Changes to other general licences

In addition, the content of AGG No. 30 (non-sensitive transactions with Iran) will be expanded and No. 31 (award of public contracts and concessions) will be adapted to the Russia Sanctions Regulations. The amendments will enter into force on 1 September 2023 and the AGGs will be valid until 31 March 2024. Their use will also have to be indicated in the export declaration.

Extension of validity

At the same time, the validity of certifications of non-objection (*Nullbescheide*), information on the list of goods (*Auskünfte zur Güterliste – AzGs*) and declarations by the person responsible for exports issued on or after 1 September 2023 will be extended from one year to **two years**.

New type of publication

In the future, BAFA's AGGs will only be published on its website. A publication in the Federal Gazette is no longer required. Therefore, exporters should consult BAFA website in order to be informed about the latest developments.

Impact

AGGs have important advantages over individual licences: they do not have to be applied for, they have the same legal effect as an individual licence and they offer planning security. The measures taken therefore represent a **considerable relief for German exporters**.

However, if the individual examination by BAFA is discontinued, a **more precise internal examination** by the individual exporter will become necessary. In case an AGG is used erroneously, even though its requirements are in fact not met, this may constitute an unauthorised export with potential criminal or regulatory consequences. Companies are therefore more accountable and should strengthen their export control compliance procedures in this respect.

Licence applications already submitted to BAFA should be checked to evaluate whether they may fall under one of the new or revised AGGs. If so, exporters should cancel their applications accordingly.

Critical exports will continue to be reviewed to the extent required by law. The review process as such will not be shortened by the measures. In fact, it is likely that the review will be more intensive, as the measures are intended to gain resources for such critical exports. This could particularly affect exports to China, as the German government's China strategy indicates that exports to China will be subject to closer scrutiny.

BLOMSTEIN will continue to monitor developments in legislation and administrative practice. If you have any questions, please do not hesitate to contact Dr. Roland Stein and Dr. Florian Wolf as well as Dr. Laura Louca and Dr. Tobias Ackermann.