



# **GUIDELINE TO FOREIGN TRADE CONTROL**

**of AVL SET GmbH**

AVL SET GmbH

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## 1. Purpose

AVL SET GmbH ("AVL") is subject to national and international import and export regulations, which have to be followed to the letter. A breach of the applicable import and export regulations and of the sanction regulations can have serious consequences (**see Chapter 4.7**).

The goal of these guidelines is to support AVL employees in adhering to import and export regulations when importing and exporting goods, including the transfer and provision of software and technology (see definition in **Chapter 3**) and the provision of technical support (see definition in **Chapter 3**). The provision of services and the transfer and provision of data, know-how and similar falls within the scope of the import and export regulations. It is important that the AVL employees understand these regulations and that they are familiar with the risk indicators for possible restrictions on import and export. These guidelines are intended to help in complying with the local import and export regulations of the countries in question, in particular the regulations of the European Union (EU) and the United States of America (USA).

A transaction should be assessed to see whether it is subject to foreign trade controls in the early acquisition phase. The project can then be designed accordingly, or the unnecessary acquisition costs can be avoided. An assessment is required by law before the contract is signed and before the first delivery is carried out or provided (including technical support).

## 2. Scope

These guidelines apply for AVL and all its employees, as well as companies and natural persons working on behalf of AVL (i.e., temporary staff, consultants, etc.).

The complexity of the import and export regulations of the relevant country means these guidelines cannot cover all the aspects of the import and export controls and all matters with which the employees may be confronted in the course of their work. The Export Compliance Officer is therefore available to employees to help deal with uncertainties, questions or concerns.

### 3. Terms

The import and export regulations of the countries in question use the following terms, which are written in this document in italics:

<b>Begriff/Abkürzung</b>	<b>Erklärung/Bezeichnung</b>
Dual use items	Goods which can be used for both civil and military application
Development	IS related to all phases prior to serial production, such as: research, design, analysis, assembly and testing of prototypes, pilot production schemes, process of transforming design data into a product, configuration design, integration design, design data, layouts, concepts; later development work on existing products is also included.
Export control	Regulations which may limit the export of goods, services, data and financial resources.
EAR	Refers to the Export Administration Regulations, a set of regulations implemented by the US Department of Commerce.
Goods	This term includes products, technology and software.
ITAR	Refers to the International Traffic in Arms Regulations, a set of regulations implemented by the US Department of State.
Production	Means all production phases, such as: product engineering, manufacture, integration, assembly (mounting), inspection, testing and quality assurance
Transfer within the European Union	The delivery or transport of an item from the federal territory of one EU member state to a recipient in another EU member state.
Military end use	The following is deemed military end use <ul style="list-style-type: none"> <li>• assembly of, or incorporation into, military equipment</li> <li>• the use of production, test or analytical equipment for the development, production or maintenance of military equipment</li> <li>• the export of unfinished products which are intended to be used in a plant to produce military equipment</li> </ul>
Military equipment	Goods with a military end use and goods included in a military list issued by the authorities.
Non-listed goods	All goods which are not defined by law as military equipment or dual use items.
Software	A collection of one or more programs or micro programs fixed in any tangible medium of expression. Software that is generally available to the public and is sold from stock at retail selling points without restriction, is designed for installation by the user without further substantial support by the supplier and is in the public domain is not subject to export controls.
Technical data	May take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.
Technology	Specific information necessary for the development, production or use of goods. The information takes the form of technical data or technical assistance.

	Controls on the export of technology do not apply to information in the public domain, to basic scientific research or to the minimum necessary information for patent applications.
Use	Installation (including on-site installation), operation, maintenance (checking), repair, overhaul, refurbishing.

## 4. What is foreign trade control?

### 4.1 General

Foreign trade control includes all activities related to the import and export of *goods*, including the transfer and provision of *software* and *technology*, and the provision of *technical support*. This includes *services*, data and material or immaterial assets (i.e., data, know-how and similar). It mostly refers, in practice, to the matter of *export controls* (export, transit and/or brokering), which is why we shall subsequently only deal with exports (and not imports as well). Customs law regulations also have to be taken into consideration when importing goods and/or services.

Export is a very broad term. The method by which *goods*, *services*, *software*, data and material or immaterial assets are transferred is here irrelevant. Export also includes (but is not limited to) the following methods of transfer:

- Upload to or download from websites / servers
- Transfer of (for example) *technology* in an email to a foreign citizen or a foreign company
- Transfer of (for example) *technology* to a foreign citizen in the course of a personal discussion, meeting or telephone call
- *Technical assistance* by an AVL employee for customers based abroad or *technical assistance* for foreigners by AVL employees in Austria
- Foreign citizens viewing *technical data*

Limitations to foreign trade can apply to all sectors and lines of business. The following lines and areas of business are however, in particular affected: Aviation and defense, oil and gas, transport and logistics, shipping, process engineering, telecommunication, chemicals, pharmaceuticals, finance and medical goods.

### 4.2 Categories of foreign trade control

Export restrictions include the following aspects in particular:

- Export restrictions for the *goods*, *services* and data subject to *export control* which can be used for military purposes (see 4.2.1).
- Export restrictions because of sanctions and/or embargos against countries, persons, companies and organizations (see 4.2.2).

## 4.2.1 Goods, services and data subject to export control

### 4.2.1.1 General

Export control regulates in particular the export of goods and/or dual use items, including the transfer and provision of software and technology, services and data for military purposes.

Goods are in every case subject to export control if they are either military equipment or dual use items.

Services are subject to export controls if the know-how used or the object of the service is subject to export control. This includes for example, maintenance or repair work for a product with a possible military end use, as well as other forms of technical assistance.

Data is subject to export control if it affects goods subject to export control. This includes, for example, technical specifications and blue prints for products with a possible military end use.

Only goods, services and data will, in summary, be dealt with below.

The export control regulations of most countries only affect the export of goods, services and data from territories, which are within their jurisdiction. However, this also includes the brokering of goods between third countries.

However, the USA's export control regulations also have an extra territorial effect. This means that the export of US controlled goods outside the USA may be subject to the USA's export control regulations. Therefore, the export control regulations of several jurisdictions may apply when exporting. The EU and the USA's export control regulations always need to be taken into account, in addition to the national export control regulations.

### 4.2.1.2 Type of goods, services and data

#### a) Military equipment and/or services and data related to military equipment

A license generally needs to be acquired for the import; export and *transfer* within the European Union of *military equipment* (see **Chapter 4.4**).

#### b) Dual use items and/or services and data related to dual use items

The transfer within the union of *dual use items* may be subject to a license. The requirement for a license may be based on European Union law, as well as national regulations. Certain *dual use items* can be transferred within the EU without a license being required. In this case though, the customer is to be informed that the *goods* may be subject to a requirement for a license if they are later exported to a third country.

An export license is always required for delivery **outside the EU**.

#### c) Non-listed goods and/or services and data related to non-listed goods

*Non-listed goods* are also generally subject to export control regulations. It is necessary to ask how and where the *non-listed goods* (i.e. products, *technology* and *software*) are to be used. The end use of the *goods* can make a license necessary.

If the *non-listed goods* are to be partly or wholly used for a military purpose, then a license may be necessary, or a ban on exporting may be in place.

Possible indicators for a requirement for a license, or a ban on exports, are:

- Customer/end user is active in the arms industry or the NBC weapons related / nuclear technology sector
- Customer/end user is unusually reluctant to provide information on the intended end use of the *goods*
- The product specifications or scope of delivery do not fit the customer/end user's production program, or are not plausible
- Customer does not require on-site support, service or installation support, although this is otherwise normal
- Unusual packaging, unusual transport routes, unusual labelling

The product manager/ project manager/ technically responsible leader shall perform or initiate the assessment, whether the *goods*, services and data are to (or can) be used militarily, or for “*Dual use*” purposes. If reasonable doubts arise, then they must ask at the responsible authorities and/or apply for an export permit (see **Chapter 4.4**).

d) Technical assistance

*Technical assistance* may also be subject to a requirement to acquire a license, or an export ban, if it relates to *military equipment* (end use). The assistance itself does not necessarily have to be of a military nature.

Merely providing administrative and financial support to a company that produces military products does not generally fall within the definition of *technical assistance*. Information in the public domain, basic scientific research and similar is also not subject to a requirement for a license.

## 4.2.2 Sanctions and/or embargos against countries, persons, companies and organizations

### 4.2.2.1 General

The European Union, individual states or associations of states can impose sanctions on other states. Reasons for this may include an attempt to force the country to change its behavior, or to prevent weapons of mass destruction from being built. Certain exports may, depending on the type and scope of the sanctions, be forbidden or may first require a license.

This type of sanctions can not only be imposed upon states, but also on persons, groups, companies and organizations. Natural persons or groups of persons who have sanctions imposed on them are often closely associated with sanctioned states or terrorist organizations. Companies and organizations may be the property of sanctioned countries or terrorist groups, or may be controlled by them.

The most important sanctions are issued by the United Nations (UN), the EU, the OSCE and the USA.

### 4.2.2.2 Customer/end user

In order to recognize whether any risks exist regarding adherence to export control regulations, AVL needs to know its customers and also know what the probability is that the end user will misuse the goods.

If sanctions have been imposed on the customer/end user then goods must not be delivered to them and they may not be granted any financial benefits. The EU, USA and UN sanctions lists have (at the very least) to be consulted in order to ascertain whether sanctions have been imposed on the customer/end user (**see Chapter 5/ sanction list**).

AVL has made a software tool (export compliance engine) available which shows the current status of the aforementioned sanctions lists.

#### 4.2.2.3 Point of destination

Sanctions/embargoes have been imposed on various states. Export to these countries is subject to restrictions and may – as long as export is not forbidden – require a license. EU and USA (OFAC, EAR and ITAR) legal acts, the resolutions of the UN Security Council and decisions by the OSCE are (at the very least) to be taken into account when assessing possible sanctions/embargos (see **Chapter 5/ sanction list**).

#### 4.2.3 Four important questions in relation to foreign trade control

The following questions will help every employee decide if a risk of foreign trade restrictions exists:

1. What is the nature of the *goods*, services and data to be exported?  
A license is always required in relation to *military equipment*, whilst *dual use items* mostly require a license (see above 4.2.1.2)
2. What is the intended use for the *goods*, services and data to be exported?  
When dealing with *non-listed goods*, services and data, an enquiry should always be made about the intended use. If it or they are to be used *militarily*, then an export license needs, as a rule, to be acquired. Enquiries should be made at the responsible authorities in cases of doubt (see above 4.2.1.2)
3. Who is the customer, who is the end user?  
All customers (and if known, the end user) are to be assessed to see whether they are included on a sanctions list. Deliveries may not be made if this is the case (see above 4.2.2.2)
4. What is the point of destination of the *goods*, services and data to be exported?  
Deliveries may not be made to countries on which sanctions or embargoes have been imposed, or to which deliveries are restricted (see above 4.2.2.3).



### 4.3 Re-Export of US Items Outside of the United States of America

*EAR* and *ITAR* provide for extraterritorial application of US export control standards. This means that US-controlled items may be subject to a licensing requirement or re-export ban by the US pursuant to these regulations.

US-controlled items are all US-origin items wherever located and all foreign-made commodities that are a product of US technology or software.

All foreign-made commodities, software or technology that incorporates specified amounts of US-origin commodities, software or technology controlled under *EAR* will be subject to US export control standards (“de-minimis” rule).

If a product incorporates components or technology subject to *ITAR*, the entire product is subject to US export control standards. It is not relevant how important the component is relative to the overall value of the product, even the smallest component will “contaminate” the product (“see-through” rule).

Every US citizen worldwide is subject to US export control standards, regardless of where the US citizen resides. Additionally, any foreign person staying in the US is subject to US export control standards.

### 4.4 Licensing

A license must be acquired before exporting *goods*, services or data subject to a requirement for a license.

The Export Compliance Officer shall acquire the required license from the responsible authority before carrying out the export.

Any license issued is deemed to have been automatically revoked *ex lege* if a sanction/ embargo contradicting this license comes into force after said license has been given.

A license is granted for a limited period and may not be transferred.

### 4.5 Duties to notify

Even when not subject to bans and obligations to acquire a license, duties of notification may exist for certain transactions (i.e., payments). The relevant national foreign trade regulations should be consulted to ascertain which transactions are to be reported to which authority.

### 4.6 Duties to provide documentation

Transactions related to foreign trade always have to be documented, in particular when applying for and receiving a license and assessing whether business partners are on a sanctions list. This ensures that it can be proven that the legal requirements have been adhered to and ensures that the transactions can, in individual cases, be traced and understood. Duties to provide documentation are generally taken from the relevant national regulations; the records must in

particular contain commercial documents such as invoices, manifests and transport or other dispatch documents. Said papers will ensure that the following can be verified:

For *military equipment*

- Description of the defense-related product and its reference according to the military equipment list;
- Quantity and value of the defense-related product;
- Date of transfer/export;
- Name and address of supplier and recipient;
- The defense-related product's end use and end user;
- Proof that information on an export limitation attached to a transfer license has been transmitted to the recipient of the defense-related products.

For *dual use items*

- Designation and description of *dual use items*;
- Quantity and value of these items;
- Date of transfer/export;
- Name and address of exporter and consignee;
- The *dual use item's* end use and end user.

#### 4.7 Legal consequences

A breach of the export control regulations can have serious consequences, which are set out in detail in the relevant national regulations; the following risks exist, amongst others:

- High penalties for AVL
- Possible damage to AVL's image
- AVL may itself be placed on company sanctions lists
- Criminal sanctions against employees (monetary penalties or prison sentences)

A breach of the export control regulations by an employee is a serious breach of these guidelines and AVL's code of conduct, as well as a breach of his/her employment contract. It can lead to appropriate disciplinary action, pursuant to the applicable employment law. If third parties are involved in said breaches in the course of their work on behalf of AVL, then they may also be liable to pay compensation. The business relationship may, if necessary, be ended.

#### 4.8 Reporting

If an employee becomes aware that AVL is breaching export control regulations, or if he/she believes that said regulations are being breached, then he/she is expected to inform his/her supervisor of this immediately.

The employees may also report to the Managing Director instead of addressing their supervisor at any time, either alone or, if they prefer, together with a trusted person.

It is deemed to be appropriate to inform directly the Group Compliance Officer (e-mail: [group-compliance@avl.com](mailto:group-compliance@avl.com)) or the Export Compliance Officer, if the employee has good reason to inform one of these persons rather than the supervisor or the Managing Director.

## 5. Applicable documents

Document no./ data name	Title	Approval
QM4000GD07	Code of Conduct of AVL SET	Horst Hammerer / Tobias Schelter