



Principles

- Not all data transmitted across borders are subject to a licensing procedure.
- It is essential to check whether the data to be transmitted across the Swiss border can be assigned an export control number (ECCN) in annexes 2-5 of the Goods Control Ordinance (GCO).
- In addition, there is a licensing requirement for not listed data if you, as the exporter, have reason to believe that these items are intended for a weapons of mass destruction program.
- If data subject to licensing requirements are to be outsourced to a server, the location of the server is generally decisive for the licensing procedure (see page 13 for additional explanations).
- Access from abroad to data subject to licensing requirements in Switzerland already constitutes an export within the meaning of art. 3 para. 1 GCO (see page 12 for additional explanations).
- The licensing procedure is handled via the electronic licensing platform ELIC.



Goods Control Act (GCA) and Goods Control Ordinance (GCO)

art. 2 GCA (scope of application):

This act applies to dual-use goods and specific military goods that form the subject matter of international agreements.

The Federal Council shall determine which dual-use goods and which special military goods that form the subject matter of international control measures that are not binding under international law are subject to this Act.

This act only applies insofar as the Federal Act on War Material or the Nuclear Energy Act is not applicable.



GCA and GCO

art. 3 GCA (definitions):

- Goods means commodities, technologies and software;
- Technology means information for the development, manufacture or use of goods that is neither generally accessible nor serves the purposes of pure scientific research (see also notes and definitions to annex 1 GCO).



GCA and GCO

art. 3 GCO (licence requirements):

Para 1 Any person who wishes to export nuclear goods in accordance with Annex 2 Part 1, dual-use goods in accordance with Annex 2 Part 2, special military goods in accordance with Annex 3, strategic goods in accordance with Annex 4 or goods subject to national export controls in accordance with Annex 5 requires an export licence from the State Secretariat for Economic Affairs (SECO).

Para 2 Any person who wishes to export nuclear goods in accordance with Annex 2 Part 1 with the export control numbers (ECN) 0C001 or 0C002 requires a licence from the Swiss Federal Office of Energy (SFOE). The foregoing also applies to goods with ECN 0D001 or 0E001 where they are software or technology for goods with ECN 0C001 or 0C002. In these cases, the SFOE takes the place of SECO in relation to the application of the other provisions of this Ordinance.

Para 4 Any person who wishes to export goods that they know or have reason to believe are intended for the development, manufacture, use, passing on or the deployment of NBC weapons must request SECO for a licence the goods are not listed in Annexes 2-5 or exceptions from the licence requirement are made.



Annex 1 GCO: GENERAL TECHNOLOGY NOTE (ATA) (to be read in conjunction with section E of categories 1 to 9 of Annex 2 GCO)

The export of "technology" which is "required" for the "development", "production" or "use" of goods controlled in Categories 1 to 9, is controlled according to the provisions of Categories 1 to 9.

"Technology" "required" for the "development", "production" or "use" of goods under control remains under control even when applicable to non-controlled goods.

Controls do not apply to that "technology" which is the minimum necessary for the installation, operation, maintenance (checking) and repair of those goods which are not controlled or whose export has been authorised.

Controls on "technology" transfer do not apply to information "in the public domain", to "basic scientific research" or to the minimum necessary information for patent applications.



Annex 1 GCO: NUCLEAR TECHNOLOGY NOTE (NTA) (to be read in conjunction with section E of category 0 of annex 2 GCO)

The "technology" directly associated with any goods controlled in Category 0 is controlled according to the provisions of Category 0.

"Technology" for the "development", "production" or "use" of goods under control remains under control even when applicable to non-controlled goods.

The approval of goods for export also authorizes the export to the same end-user of the minimum "technology" required for the installation, operation, maintenance and repair of the goods.

Controls on "technology" transfer do not apply to information "in the public domain" or to "basic scientific research".



Definitions according to annex 1 GCO

"In the public domain" (GTN NTN GSN), as it applies herein, means "technology" or "software" which has been made available without restrictions upon its further dissemination (copyright restrictions do not remove "technology" or "software" from being "in the public domain").

"Basic scientific research" (GTN NTN) means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective.



Definitions according to annex 1 GCO

"Technology" (GTN NTN All) means specific information necessary for the "development", "production" or "use" of goods. This information takes the form of 'technical data' or 'technical assistance'.

N.B.: 1:

'Technical assistance' may take forms such as instructions, skills, training, working knowledge and consulting services and may involve the transfer of 'technical data'.

N.B. 2:

'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.



Definitions according to annex 1 GCO

"Development" (GTN NTN All) is related to all phases prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.

"Production" (GTN NTN All) means all production phases, such as: construction, production engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance.

"Use" (GTN NTN All) means operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.



Procedure according to GCA and GCO

- (1) Classification of the technology to be **exported**: can the goods to be exported be assigned to an export control number of the annexes to the GCO?
- (2) If so, a licence in accordance with art. 3 para. 1 GCO is required.
- (3) If not, no licence required.
- (4) Art. 3 para. 4 GCO relevance to examined
- (5) Assessing the relevance of destination countries and business parties to Swiss sanctions law (SESAM)



Nature of goods and type of export

- Goods subject to licensing requirements may be exported in tangible or intangible form.
- Form of these goods: hardware, know-how on data carriers or via cloud computing; knowledge transfer via persons.
- Export means: cross-border activity; GCA is subject to the territorial principle; access from the customs territory to Swiss servers;
- Not considered as export : business trips abroad, cross-border commuters and home offices from abroad, provided that GCA-recorded technologies are not made available to third parties. The data carriers must be secured (VPN access, encryption) and cannot be accessed by third parties abroad. Printouts, provided that these are under the control of the "exporter" at all times and are not made accessible to third parties.



Nature of goods and type of export

(Continued from page 12)

In principle, is not yet considered as an export :

The transfer of encrypted data controlled under the GCA to a server abroad.

An export requiring a license is only deemed to have taken place if persons from abroad are granted access rights to this encrypted data.

Swiss sanction measures as well as any additionally applicable provisions of third countries (e.g. location of the server or country of origin of the technology) remain reserved.

It is recommended to ensure the traceability of the access rights granted and the accesses actually made by means of technical precautions (log files, access logs, etc.).

Additional security measures such as audits, agreements, work instructions and training for IT service providers are recommended and should be reviewed regularly.



Contact

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