



## Guidance note 2/2016

# Guidance note on the application of the definition of "exporter" in relation to "suppliers" and "resellers" of dual-use goods

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*The purpose of this Note is to provide guidance to the economic operators by setting out good practices for interpreting certain provisions of Council Regulation (EC) N° 428/2009 with a view of reducing occasional divergences in the application of EU law. This Note has been agreed upon with the competent authorities of the Member States and does not lay down additional obligations or pre-conditions to those of existing EU law. It is not legally binding. Only the Court of Justice of the European Union is competent to give a legally binding interpretation of EU law.*

The main purpose of this note is to respond to queries raised on the application of the definition of exporter under Article 2.3 of Council Regulation (EC) No 428/2009 in cases where exports involve a reseller in one Member State which holds the contract with the consignee in the third country, and a manufacturer (or a “supplier”), in another Member State, who is responsible for sending the goods out of the European Union.

When determining who acts as exporter in any such scenario involving manufacturers (or a “supplier”) and resellers, the exporter will be the entity that holds the contract with the consignee in the third country and who makes the decision to send (or let be sent) the item out of the customs territory of the European Union. The entity who acts as exporter according to this definition is also the entity responsible for obtaining any necessary export licences.

Logistical arrangements should not interfere with the identification of the exporter; a manufacturer (or “supplier”) acting as declarant from a customs perspective or performing other logistical functions does not mean that the manufacturer (or “supplier”) makes the decision to send the item out of the customs territory of the European Union, or that the reseller is not acting on their own behalf.

The contracting party should be considered as the "exporter", rather than any company that acts as a declarant or performs other logistical functions.

## **Annex**

### **Article 2.3 of Council Regulation (EC) No 428/2009**

“‘exporter’ shall mean any natural or legal person or partnership:

(i) on whose behalf an export declaration is made, that is to say the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of the Community. If no export contract has been concluded or if the holder of the contract does not act on its own behalf, the exporter shall mean the person who has the power for determining the sending of the item out of the customs territory of the Community;

(ii) which decides to transmit or make available software or technology by electronic media including by fax, telephone, electronic mail or by any other electronic means to a destination outside the Community.

Where the benefit of a right to dispose of the dual-use item belongs to a person established outside the Community pursuant to the contract on which the export is based, the exporter shall be considered to be the contracting party established in the Community”.