



"Exporting Nuclear Materials Items and Technology from Belgium: An Impossible Challenge?"

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Fifteen years after

- ◆ U.S.–India Civil Nuclear Agreement
- ◆ Iran sanctions and their recent lifting
- ◆ Russian embargo...

New business opportunities?

- ◆ Indo-US nuclear deal
- ◆ Iran sanctions and their progressive lifting
- ◆ New peaceful nuclear programmes (UEA, Kenya, Pakistan..)

FINALISATION DAY

14 Jul. 2015

- Iran and the major powers "enter into the plan, known as the **Joint Comprehensive Plan of Action (JCPOA)**.
- Iran and the major powers start developing a joint plan for implementation of the JCPOA, including measures to ensure the security of the nuclear facilities and the implementation of the JCPOA.

ADOPTION DAY

18 Oct. 2015

- JCPOA participants agree to follow the development and implementation of the JCPOA and to register any violations.
- The Joint Commission is established to follow the development and implementation of the JCPOA and to register any violations.

IMPLEMENTATION DAY

First half 2016

- Occurs when the JCPOA is implemented.
- The Joint Commission reviews and **decides** on proposals for nuclear related transfers to or activities with Iran.

TRANSITION DAY

18 Oct. 2023

- Takes place eight years from Adoption Day, upon a report from the IAEA director-general stating **the JCPOA has been reached** and **Iran remains for peaceful activities**.
- The **EU terminates any remaining sanctions**.

TERMINATION DAY

18 Oct. 2025

- Takes place 10 years from Adoption Day provided no UN sanctions have been reinstated.
- UN will pass resolution approving termination of JCPOA.
- The UN Security Council "**would no longer be seized of the Iran nuclear issue**", or close the file

Nuclear trade principles : EU competence

- ◆ Not anymore Euratom even of article 59
- ◆ Nuclear trade control : a part of WMD trade control system(s)
- ◆ Essentially Regulation 428/2009

New constraints?

- 9/11 the fight against nuclear terrorism (NSG)
- Russian, North Korean embargo(es)... and nuclear items
- UNSCR 1540 from export control to trade management
- UNSCR 1887 adoption of international conditions of supply

Extension of operators responsibilities ?

In terms of
transactions

- transit, brokering, ship carrying, financing

In terms of
operations

- intangible

In terms of
items

- lists updating and catch-all (more)

Maybe easier to understand via

The *gaz station* syndrome

1930



The gaz station syndrome

1960



The gaz station syndrome

1970



The gaz station syndrome

2000



A example of extension of operator liability

- “Has been informed”
- “Knows”
- “Is aware”

That the items are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons.

Extension of operator liability and potential extension of scope

New potential end use to be controlled: **Human security**

“... the items in question are or may be intended, in their entirety or in part, for **use in connection with a violation of human rights, democratic principles** or freedom of speech as defined in the Charter of Fundamental Rights of the European Union, by using **interception technologies and digital data transfer devices** for monitoring mobile phones and text messages and targeted surveillance of internet use, such as via monitoring centres or lawful interception gateways”

(European Parliament legislative resolution of 23 October 2012 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (COM(2011)0704 – C7-0395/2011 – 2011/0310(COD))

However new trade facilitations has been adopted

- **EU001** covers most Annex I exports Exports to **8 destinations** (AU, CA, JP, NZ, NO, CH, LI, US) ;
- **EU002** export of certain dual-use items to **6 destinations** (AR, HR, IS, ZA, KR, TR);
- **EU003** Export **after Repair / Replacement**. It authorises exports to 24 destinations (AL, AR, BA, BR, CL, CN (including HK and MO), HR, MK, TOM, IS, IN, KZ, MX, ME, MA, RU, RS, SG, ZA, KR, TN, TR, UA, AE);
- **EU004 Temporary Export for Exhibition or Fair**. It authorises exports to 24 destinations (AL, AR, HR, BA, BR, CL, CN (including HK and MO), MK, TOM, IC, IN, KZ, MX, ME, MA, RU, RS, SG, ZA, KR, TN, TR, UA, AE)
- **EU005 Telecommunications**- Annex IIe - Covers some category 5 part 1 items (for a specific list of covered items please refer to the legislation). It authorises exports to 9 destinations (AR, CN (including HK and MO), HR, IN, RU, ZA, KR, TR, and UA)
- **EU006 chemicals** - Covers several items in category 1C350, 1C450.a. and 1C450.b. It authorises exports to 6 destinations (AR, HR, IC, KR, TR, and UA)



But none for category 0
(nuclear items)



And most of nuclear materials,
equipment and technology are
included in Annex IV



Regulation under review

What's about Belgium ?

Before 2004

- **One** licensing authority to apply for an export licence
- **One** committee to assess CANPAN/CANVEK to grant the authorisation
- **One** custom authority

After 2004

- **Three** regional licensing authority plus one federal to apply for a licence
- **One** committee (CANPAN/CANVEK) to assess, grant or deny the authorisation
- **Three** regional authority to assess grant or deny the authorisation
- **One** custom authority

How this happenned ?

Before 2004

- **EU: Regulation 1334/2000** ruling the exports of dual use items
Nuclear items: Annex I category 0 and 1
- **Belgium Nuclear Trade Law of February 9 1980** and Ministerial Decrees
Establishing CANPAN/CANVEK and export control principles of nuclear items and a **list of items** to control

After 2004: Nuclear trade regionalization: an intended consequence...

Regionalization organized by the Special Law
on Constitutional Reform.

Article 6§4 VI Special law is referring to :

- *produits et des technologies à double usage*
- *producten en technologieën voor tweeërlei gebruik*

... as defined by Annex I of EU Regulation,
therefore nuclear trade is included

Statement during the debate at the
Parliament by the Federal Minister in
charge that “nuclear items” are
included....

Political statement in contradiction with
the Law ...

so let's compromise

Informal adoption of **gentlemen agreement** between Federal and Regions

1. Regional authorities will voluntary submit nuclear export application to CANPAN/CANVEK
2. Federal Authorities will invite Regions to participate to CANPAN meetings (with right to vote)

Why keep things simple when complexity is possible ?

Constitutional Court Judgment of November
2011 (168/2011)

- Acknowledging for a **parallel competence of Federal and Regions**
- Involve a double authorisation procedure
Who is the first, who takes over the decision?
- List of items not necessarily identical
 - Law of February 1981 and its implementing acts for the Federal authority
 - Regulation 428/2009 (Annex I) for Regions

Gouvernement Agreement of December 2011

Comittment to:

Les Régions et le niveau fédéral s'engagent dans **un accord de coopération** à faciliter la coopération pour ce qui est de la politique en matière d'exportation de **matières nucléaires**. L'accord de coopération se fondera sur les dispositions légales et institutionnelles en vigueur et sera axé sur les échanges d'information, le partage d'expertise et le moyen de rendre efficaces les procédures prévues.

However in Dutch:

De Gewesten en het federale niveau verbinden er zich via een samenwerkingsakkoord toe om de samenwerking rond het **nuclear exportbeleid** te vergemakkelijken. Het samenwerkingsakkoord zal voortbouwen op de huidige geldende wettelijke en institutionele bepalingen en zich richten op informatie-uitwisseling, expertise- uitwisseling en het doeltreffend maken van de voorziene procedures.

- Cooperation Agreement was **not signed** under the previous federal government
- **No similar commitment** taken by the new Federal Government

Conclusion: Impact on Belgian nuclear trade?

- Number of licences issued didn't decrease
- Number of denials didn't increase
- No significant development of new nuclear activities