

Export restrictions on maritime navigation goods and technology

FREQUENTLY ASKED QUESTIONS – AS OF 26 April 2022

Q1. Is there now a total ban of exports to Russia for marine navigation and radio communication equipment?

EU sanctions have put in place certain export restrictions applicable to ‘advanced technology’ items and these take the form of prohibitions. The items concerned fall under the scope of chapters 4 and 5 of the applicable Commission Implementing Regulation adopted in accordance with Article 35(2) of Directive 2014/90/EU¹. These prohibitions are subject to limited exemptions and derogations.

Exemptions cover, among others, humanitarian purposes, health emergencies, the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment, or as a response to natural disasters.

There is a specific derogation for maritime safety that may apply to the exports of marine navigation and radio communication equipment. In this case, it is necessary to reach out to the relevant Member State competent authority to request an authorisation.

Q2. When can a Member State competent authority grant a derogation based on maritime safety?

The derogations provided for in Articles 2(4)(d), 2a(4)(d) and 3f(4) for the sale, supply, transfer or export of the goods and technology intended for maritime safety are subject to prior authorisation from the relevant national competent authority, which can only be granted under strict and specific conditions.

The national competent authorities are in charge of determining which documentation is necessary to assess and verify that the conditions for granting a derogation are met.

Maritime safety can be defined as the safety of life, health, property and the environment against environmental and operational risks associated with navigation. Accordingly, a derogation may be granted if a ship is in need of assistance and/or seeking a place of refuge², if a ship in a Member State’s port or territorial waters cannot safely continue its voyage without the necessary equipment, or again if it needs regular software updates of nautical charts as required by SOLAS chapter V (Regulation 27).

Q3. What information should be provided when requesting an authorisation?

If the intended end-use of the marine navigation and radio communication equipment falls under the scope of maritime safety, the exporter may apply for an authorisation and a case-by-case assessment

¹ Currently in force: Commission Implementing Regulation (EU) 2021/1158 of 22 June 2021 on design, construction and performance requirements and testing standards for marine equipment and repealing Implementing Regulation (EU) 2020/1170, OJ L 254, 16.7.2021, p. 1–291

² See POR Operational Guidelines, <http://www.emsa.europa.eu/we-do/safety/places-of-refuge/download/5121/2646/23.html>

is made by the competent authority of the Member State in which the exporter is resident or established. This is also applicable for the related technical or financial assistance.

The request for authorisation should be submitted by electronic means. Annex IX to Regulation (EU) 833/2014 provides forms containing the mandatory elements for these notifications or applications and whenever possible, exporters should use these forms. However, when the use of the form is not possible, exporters shall provide at least all the elements described in the form and in the order provided set out in the forms. If the item is covered by the EU Dual-Use Regulation, exporters must also submit the form(s) pursuant to that Regulation to the national competent authority.

Q4. Is it possible to provide training on goods subject to export restrictions to Russian seafarers or seafarers in Russia who are working for non-Russian entities on vessels with non-Russian ownership outside of Russia?

It is prohibited to sell, supply, transfer or export certain maritime navigation goods and technology (Paragraph 1 of Article 3f of Regulation 833/2014). It is prohibited to provide related technical assistance, brokering services or other services related to these goods and technology, directly or indirectly, to any natural or legal person, entity or body in Russia, or for use in Russia (Paragraph 2(a) of Article 3f of that Regulation).

Article 1(c) of Regulation 833/2014 defines technical assistance as “any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services, including verbal forms of assistance”.

Accordingly, it is prohibited to provide training for any goods and technology falling under the scope of Article 3f to seafarers physically located in Russia, as well as to seafarers who would put such training to use in Russia. By virtue of the non-circumvention clause (laid down in Article 12) it is prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions in this Regulation.

Provision of technical assistance related to these maritime navigation goods and technology to Russian nationals outside of Russia is not prohibited, unless there is evidence that such technical assistance would be used in Russia.