Strategic Trade Control Development

Case Study #2: Malta as a European Union Member

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Malta

• **Location**
  • Centre of the Mediterranean: south of Sicily (Italy), east of Tunisia and north of Libya
  • Crossroads between Europe, North Africa and Middle East

• **Consequence of Membership**
  • Supranational EU law becomes Maltese law
  • National laws and regulations had to be amended to conform to EU law
Malta in the Mediterranean
Malta in the European Union

- **Membership:**
  - Joined the EU on 1 May 2004
  - Presently holds the 6-monthly rotating Presidency (01 – 06/2017)

- **Consequences of Membership**
  - **Legal**
    - Supranational EU law becomes Maltese law
    - National laws and regulations had to be amended to conform to EU law
  - **Political**
    - Being party to all weapon control treaties (BTWC, CWC, NPT, etc.) is mandatory for all states seeking EU membership
    - Fully endorses the EU’s policies concerning disarmament and non-proliferation
Maltese economy

- **Economy:**
  - Small insular state
  - GDP: ± €8.8 billion
  - Few natural resources
  - National economy is highly dependent on
    - Import and export, and therefore on
    - international economic climate

- **Trade**
  - Export value: ± €2,73 billion; Import value: ± €2,77 billion
    - Values may fluctuate greatly from year to year
  - EU Members, North African states and China are the most important trading partners
  - Export of services, machinery, electronic and electrical equipment, refined petroleum, chemicals, pharmaceuticals, instruments, clothing and footwear, and books and newspapers
  - Re-exports: mostly fuel
  - Import of raw materials and industrial supplies
EU law applicable to Malta – 1

  - *EU regime for the control of exports, transfer, brokering and transit of dual-use items* (in force since 27 August 2009)

- **Major instrument: holistic, all-encompassing regulatory approach**
  - Estimated value of controlled dual-use exports from the EU: up to €85 billion (2017)
  - Covers following types of armament programmes:
    - Biological, chemical and nuclear weapons
    - Ballistic missiles
    - Conventional arms

- Defines 4 different types of export authorisations:
  - EU general export authorisations (EUGEAs)
  - National general export authorisations (NGEAs)
  - Global licences
  - Individual licenses

- **European Commission conducts a regular export control policy review**
EU law applicable to Malta – 2

- **Main components of Regulation (EC) No 428/2009**
  - Detailed control lists based on lists developed by or included in:
    - **Australia Group** (chemical and biological weapons, and related equipment)
    - **Chemical Weapons Convention** (3 Schedules listing warfare agents and their precursors for verification purposes)
    - **Nuclear Suppliers Group** (nuclear weapons and other nuclear explosive devices, and relevant installations & equipment)
    - **Missile Technology Control Regime** (missiles and unmanned aerial vehicle technology capable of carrying a payload above 500 kg for more than 300 km)
    - **Wassenaar Arrangement** (conventional arms and dual-use goods and technologies)
  - **Catch-all principle**: the export of non-listed dual-use items may be subject to authorisation if there is reason to believe that they are intended for use in connection with a biological, chemical, nuclear weapons or ballistic missile weapons programme or for military use in countries subject to an arms embargo.
  - With some exceptions, free trading and movement of dual-use items within the EU
- **Possible additional actions by individual EU Members**:
  - Additional controls on non-listed items for public security or human rights reasons
  - Restrictions on brokering services of dual-use items and on their transit through the EU
Maltese national legislation – 1

- Internet law portal (with extensive search function)
Relevant international treaties (with focus on CBW)

- **1972 Biological and Toxins Weapons Convention (BTWC)**
  - Deposit instrument of ratification: 7 April 1975
  - No specific national law implementing the BTWC

- **1993 Chemical Weapons Convention (CWC)**
  - Deposit instrument of ratification: 28 April 1997
Relevant national legislation with respect to acquisition and transfers

- **Specific to CW:**

- **Covering both BW and CW**
  - Criminal Code (Amendment) Act (Act No. VI of 06 June 2005), Art. 328A (2)(f)

- **Provisions apply to both state and non-state actors with regard to:**
  - Use
  - Development, production, and any other form of acquisition
  - Possession, stockpiling and storage
  - Transfers, transport, financing
  - Participation as an accomplice in such activities
Relevant national legislation with respect to regulatory oversight

- **Specific to CW:**
    - Establishes the *National Authority* as required by the CWC
- **Specific to BW**
  - Prevention of Disease Ordinance (Chapter 36), as amended by various Ordinances and Legal Notices

- **Provisions apply to:**
  - Production
  - Storage
  - Transport
Biological and chemical security and safety

• **EU regulations in addition to provisions in afore-mentioned national legislative measures**
  • Specific to CW:
    • Directive 98/24/EC
  • Specific to BW
    • Directive 2000/54/EC
    • Protection of Workers from Risks related to Exposure to Biological Agents at Work Regulations, 2003 (L.N. 228 of 2003) (S.L. 242.25)

• **Other national law**
  • Environment Protection Act of 18 September 2001 as amended

• **Other international sources of CBW regulation**
  • International Ship and Port Facility Security (ISPS) Code since 1 July 2004
  • World Health Organisation / International Health Regulations

• **Provisions apply to:**
  • Production, storage, handling and manipulation (use) of materials, transport
  • Licencing, registration of installations and facilities, legal and natural persons (by Ministry of Commerce)
Freeport

- **Birżebbuġa**
  - Port located at the south-eastern tip of Malta's main island
  - Freeport established in 1988 as a transhipment hub
  - Mostly container traffic

- **Malta Freeports Act (Chapter 334 – 20 April 1990)**
  - Companies operating in Freeport are licenced by the Freeport Authority to undertake a limited set of activities
  - Licenced companies must declare the nature, quantity and country of origin, consignment or destination of the goods; and records must be available for inspection
  - Licence can be revoked, seizures undertaken and criminal charges brought in case of violation of the laws of Malta
  - Export, import and transhipment of dual-use goods fall under the pertinent national laws and EU regulations
Summary

- **Regulatory system rooted in international law**
  - BTWC
  - CWC
  - EU regulations
- **Regulation and criminalisation**
  - Integrated in national laws on oversight, criminal and penal law
  - Licensing and registration system related to pertinent activities
- **Import, export and transhipment are integrated in a complex of legislative and regulatory provisions that cover:**
  - Weapon prohibition
  - Dual-use technology transfers (internal and external)
  - Chemical and biological safety and security
  - Occupational health regulations
  - Environmental regulations