

OPINION OF ADVOCATE GENERAL
ĆAPETA
delivered on 24 September 2026 ([1](#))

Case C-538/25 [Flugzeugherstellerin] ([i](#))

Flugzeugherstellerin
joined party:
Bundesminister für Wirtschaft, Energie und Tourismus

(Request for a preliminary ruling from the Bundesverwaltungsgericht (Federal Administrative Court, Austria))

(Reference for a preliminary ruling – Common commercial policy – Controls on the exportation of dual-use items – Regulation (EU) 2021/821 – Article 2(1) – Concept of ‘dual-use items’ – Circumstances to be taken into account in determining when an item is of use ‘[also for] military purposes’)

I. Introduction

1. During the height of the Cold War, Nikita Khrushchev remarked that trouser buttons could constitute ‘dual-use’ goods, because if a soldier had to hold their pants up with one hand, they would only have one hand free to shoot, thus rendering the button a strategic, military item. ([2](#))

2. Most people would agree that finding a military use for buttons is an exaggeration. However, many people would equally agree that that is different when a two-seater aircraft designed for basic pilot training is at issue. In principle, such an aircraft seems capable of being used also for military purposes. It would thus appear obvious that there is a difference in that regard between trouser buttons and a training aircraft. One of those items could, therefore be subject to export controls, whereas the other should not be. However, once one attempts to explain *where precisely* that difference lies, things become complicated.

3. In the present reference for a preliminary ruling, the Court has been asked to engage with that difference. In essence, the Bundesverwaltungsgericht (Federal Administrative Court, Austria), the referring court, asks which of the criteria relied on by the parties to the main proceedings are relevant for establishing whether a training aircraft (and certain additional items and technology) can be of use ‘[also for] military purposes’, and thus be considered a dual-use item within the meaning of Regulation (EU) 2021/821 (‘the Dual-Use Regulation’). ([3](#))

II. The background to the present proceedings, the questions referred and the procedure before the Court

4. The applicant in the main proceedings, Flugzeugherstellerin, is an Austrian developer and manufacturer of a two-seat training aircraft ('the aircraft'). That aircraft is offered in two configurations: aerobatic and reconnaissance.

5. It arises from the case file that the present proceedings concern the aerobatic model of that aircraft. That model is designed for pilot training for general aviation and for aerobatics. The referring court highlights that that aircraft model is neither specifically designed for use by the military nor equipped with military components. (4)

6. On 22 June 2018, Flugzeugherstellerin filed an application with the now Bundesminister für Wirtschaft, Energie und Tourismus (Federal Minister of Economy, Energy and Tourism, Austria) ('the respondent authority') for an authorisation to export the following goods ('the goods at issue'):

- six aircraft for pilot training (aerobatic configuration) at a value of EUR 17 492 028;
- a flight simulator for pilot training (aerobatic configuration) valued at EUR 850 000;
- technology for the construction of the aircraft at a value of EUR 26 587 634; and
- finished aircraft parts at a value of EUR 71 558 802.

7. According to that application, the recipient of the items mentioned therein was a civilian trade company in Myanmar, with the end-user being the Myanmar Air Force.

8. In response to that application, the respondent authority initiated an authorisation procedure pursuant to Paragraph 20 of the Außenwirtschaftsgesetz 2011 (Law on Foreign Trade, Austria) ('the AWG'). That paragraph is titled 'Sicherheitsmaßnahmen' (security measures) and subparagraph 1 thereof states that where the competent minister reaches the conclusion that the exportation or transit of goods conflicts with certain authorisation criteria, he or she must initiate an *ex officio* approval procedure and notify the exporter or the person responsible for transit without delay by means of a written decision. Where that procedure is initiated, subparagraph 3 thereof then explains that the minister must decide, by means of a written decision, either to approve the exportation (if he or she considers the approval criteria of Paragraphs 3 to 13 of the AWG to be satisfied) (5) or to prohibit it (if the imposition of conditions for exportation or transit would be insufficient to ensure compliance with the approval criteria).

9. On 14 June 2019, the respondent authority granted Flugzeugherstellerin a one-year export authorisation for the goods listed in point 6 above, but made their exportation subject to certain conditions. (6)

10. According to the Austrian Government, Flugzeugherstellerin exported three aircraft, a flight simulator and some technology and aircraft parts. The aircraft and the flight simulator are currently located at an air force base in Myanmar.

11. On 22 May 2020, Flugzeugherstellerin applied for an 'extension' (7) of the authorisation of 14 June 2019 for the goods that had not yet been exported. Specifically, this concerned:

- three aircraft for pilot training (aerobatic configuration) at a value of EUR 8 746 014;
- technology transfer for the assembly of the aircraft at a value of EUR 22 974 456.95; and
- finished aircraft parts for the aircraft at a value of EUR 56 072 799.75.

12. On 23 July 2021, the respondent authority rejected that application on the basis that the criteria laid down in the AWG could not be met even if the authorisation were granted subject to certain conditions.

13. That decision was challenged before the Bundesverwaltungsgericht (Federal Administrative Court). On 3 January 2022, that court *inter alia* found that the respondent authority should have commenced the authorisation procedure by means of a decision notifiable to Flugzeugherstellerin, which it had not done. (8)

14. Accordingly, the authorisation procedure was re-initiated and then terminated by a decision rejecting Flugzeugherstellerin's request on the basis that the licensing criteria of the AWG were not met. That decision, too, was set aside by the Bundesverwaltungsgericht (Federal Administrative Court), this time in a ruling dated 3 April 2023, (9) because the respondent authority did not explain in its decision *why* it considered that the export or transit of the goods at issue could conflict with the licensing criteria of the AWG. (10)

15. Finally, on 27 December 2023, the respondent authority initiated another authorisation procedure, which led to the contested decision in July 2024. (11) Therein, the respondent authority informed Flugzeugherstellerin that it prohibits the exportation of the goods at issue on the 'reasonable suspicion' that (i) the export of the items in question – that is, the three remaining aircraft, the technology to build that model and the finished aircraft parts – may result in those items being used for the training of military pilots; (ii) it was technically possible to repurpose the aircraft type at issue for a different use, such as for reconnaissance (by retrofitting cameras) and surveillance flights (for visual surveillance); (iii) the end-user of the goods at issue was accused of persistent and systematic human rights violations; and (iv) there is sufficient evidence to suggest that the goods at issue, and in particular the technology ('know-how') for the development, manufacture and use of the training aircraft will be used or diverted for undesirable purposes.

16. On the basis of those grounds, the contested decision concludes that the exportation of the goods at issue would conflict with Paragraphs 6 ('Respect for human rights and international humanitarian law'), 7 ('Impact on the domestic situation in the country of destination') and 11 ('Risk of misuse for undesirable purposes') of the AWG, and that the imposition of conditions to ensure compliance with those criteria is not possible.

17. Flugzeugherstellerin has challenged the contested decision before the referring court. It explains *inter alia* that (i) the aircraft was not designed for military purposes; (ii) conversion for military purposes can be ruled out because such conversion would require additional technical data as well as adapted avionics; (iii) the respondent authority did not consider the evidence provided by Flugzeugherstellerin; and (iv) the respondent authority refused to grant Flugzeugherstellerin access to certain material in the file.

18. According to the referring court, the goods at issue are *not* included in Annex I to the Dual-Use Regulation, nor are they covered by the Common Military List of the European Union (12) or the restrictive measures imposed in respect of Myanmar. (13)

19. That court also explains that the respondent authority appears to have taken the contested decision on the basis of human rights considerations, which, according to Article 9 of the Dual-Use Regulation, may be taken into account when deciding to prohibit or impose an authorisation requirement on the export of 'dual-use items' *not listed* in Annex I thereto.

20. Therefore, the interpretation of the concept of 'dual-use items', within the meaning of Article 2(1) of the Dual-Use Regulation, and in particular the criteria to be taken into account for the identification of such items is decisive for the question of whether the respondent authority could legitimately prohibit the exportation of the goods at issue.

21. The referring court adds that the respondent authority assumed that, under EU law, the presence of a 'dual-use item' is a condition for engaging the authorisation procedure of Paragraph 20 of the AWG, read in conjunction with Paragraph 6 thereof. Accordingly, that authority followed the procedure laid down in Paragraph 20 and treated the goods at issue as 'dual-use items'. However, according to the referring court, Paragraph 20 of the AWG covers *all* items, not only 'dual-use items'. Therefore, the referring court additionally asks whether it is possible to prohibit the exportation of an item for reasons of human rights

considerations even if said item cannot be considered a ‘dual-use item’ within the meaning of the Dual-Use Regulation.

22. In those circumstances, the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) What circumstances are to be taken into account when assessing whether an item can be used also “*for ... military purposes*” in accordance with [Article 2(1)] of [the Dual-Use Regulation]?’

(a) Must an item be able to make a substantial contribution to the capabilities of the armed forces in order for there to be use also “*for ... military purposes*” in accordance with [Article 2(1)] of [the Dual-Use Regulation]? Alternatively, can such use already exist in the event that the item is used for the training of military personnel, without the basic training that can be undertaken using the item being distinguishable from that given to comparable civilian personnel, and the specific military training of military personnel takes place, or has to take place, at a later time using a different item?

(b) In assessing whether an item can be used also “*for ... military purposes*” in accordance with [Article 2(1)] of [the Dual-Use Regulation], must account be taken of the military capabilities of the [end-user] or recipient in the third country to which the item is to be exported, of the situation in the third country, of the possibility of the item being repurposed or of the risk of the item being diverted, or is the assessment based solely on the condition of the item when it is to be exported?

(2) Does Article 207 TFEU, read in conjunction with Article 10 of Regulation (EU) 2015/479 of the European Parliament and of the Council of 11 March 2015 on common rules for exports (OJ 2015 L 83, p. 34), [(14)] or any other provision of EU law permit the application of a national legal provision for the purpose of examining and, as the case may be, prohibiting the export of an item to a third country on the ground of human rights considerations, regardless of whether the item concerned is a dual-use item in accordance with [Article 2(1)] of [the Dual-Use Regulation]?’

23. Written submissions were lodged by Flugzeugherstellerin, the Austrian, Belgian, Greek, Spanish, French and Netherlands Governments and the European Commission.

24. No hearing was held.

III. Analysis

25. In the present case, the Court has been asked to clarify elements pertaining to the interpretation of the concept of ‘dual-use items’, as contained in Article 2(1) of the Dual-Use Regulation. It is the first time that it has been requested to do so.

26. That provision defines the concept of ‘dual-use items’ as ‘*items, including software and technology, which can be used for both civil and military purposes*, and includes items which can be used for the design, development, production or use of nuclear, chemical or biological weapons or their means of delivery, including all items which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices’. (15)

27. It is clear that that provision is worded broadly. The use of the term ‘item’, coupled with the references to ‘software’ and ‘technology’, evidences that the regulation of dual-use items is intended to go beyond the control of physical goods, (16) and therefore also beyond the scope of EU customs legislation. (17) The Dual-Use Regulation accordingly extends to technology, such as technology that is necessary to assemble and repair an aircraft from its constituent parts.

28. However, the scope of the definition of ‘dual-use items’ is, in principle, not all-encompassing. It is specifically limited to items which ‘*can be used*’ for civil and ‘[also for] *military purposes*’. (18)

29. In the present case, the Court has been asked to provide an interpretation of those elements, in particular whether the specific criteria highlighted in the referring court's first question (under points (a) and (b) thereof) are relevant for the purpose of qualifying an item as capable of use '[also for] military purposes'.

30. Accordingly, it is not necessary to provide a general explanation of when something is of 'dual-use'. Providing such a general interpretation would, in any case, be difficult – and even undesirable – without hearing the position of the EU legislature on the intended meaning behind the definition laid down in Article 2(1) of the Dual-Use Regulation, particularly because a number of acts in other areas of EU law contain specific references to the concept of 'dual-use items' (19) or make reference to language used in the definition contained in Article 2(1) thereof. (20) However, the European Parliament and the Council of the European Union have not submitted observations in the present proceedings.

31. Moreover, the Court has asked for my Opinion only in relation to the first question referred to it. I will not, therefore, engage with the examination of whether and under what conditions the Member States may submit to an authorisation procedure the exportation of items that are *not* 'dual-use items'. In any event, given that I will propose that the Court adopt a broad understanding of the concept of 'dual-use items', which suggests that the goods at issue in the present case fall within the scope of the Dual-Use Regulation, including Article 9 thereof, as relied on by the national authorities, it does not appear necessary to answer the second question to enable the referring court to decide on the dispute in the main proceedings.

32. Against that background, my Opinion is structured as follows. I will begin by making some preliminary remarks on the framework established by the Dual-Use Regulation (Section A). Thereafter, I will turn to the main conceptual dispute between Flugzeugherstellerin and the other parties to the present proceedings – that is, whether the concept of 'dual-use items', as contained in Article 2(1) of the Dual-Use Regulation, should be given a broad or a narrow interpretation (Section B). After providing the Court with the reasons why, in my view, that concept requires a broad interpretation, I will turn to answering the first question put to the Court (Section C).

A. Preliminary remarks on the Dual-Use Regulation

1. *The historical context and objective of export controls on dual-use items*

33. Modern dual-use export controls emerged from Cold War security concerns and broader non-proliferation efforts. (21) During that period, a number of international agreements were adopted to prevent the proliferation of weapons of mass destruction. (22) While these agreements notably addressed items and technology with clear military application, they did not create a comprehensive dual-use export controls framework. At the multilateral level, that framework developed through, and remains governed by, a number of multilateral arrangements. (23)

34. In the EU context, the current dual-use framework was originally established in 1994 as 'an integrated system' composed of a regulation based on the legal basis for measures of common commercial policy (24) and a common foreign and security policy decision (25) to involve, 'in accordance with their own powers, the Council, the Commission and the Member States'. (26)

35. In that system, the 1994 Dual-Use Regulation established a common framework for effective export control of dual-use goods in order to ensure compliance with the international obligations of the European Union and its Member States, without adversely affecting the functioning of the internal market. (27) However, the list of items considered to be of 'dual-use' was established by means of a common foreign and security policy decision as the content of such lists was considered strategic in nature, (28) and consequently as falling within the competence of the Member States. (29)

36. While the Council later 'communitised' that arrangement by incorporating the list of dual-use items subject to export controls into the (then) regulation on dual-use, (30) the shadow of the initial framework is

still visible in today's Dual-Use Regulation. (31)

37. Thus, while based only on Article 207 TFEU and therefore falling within the scope of an EU exclusive competence, recital 2 of the Dual-Use Regulation explains that that 'regulation aims to ensure that in the area of dual-use items, the Union and its Member States fully take into account all relevant considerations', including 'international obligations and commitments, obligations under relevant sanctions, considerations of national foreign and security policy ..., among them human rights, and considerations about intended end-use and the risk of diversion'.

38. Accordingly, there continues to exist an interplay between the common commercial policy and the foreign and security policy decisions of the Member States. As I will explain in Sections B and C of this Opinion, that impacts the interpretation of the Dual-Use Regulation.

2. *Listed and non-listed dual-use items*

39. The Dual-Use Regulation distinguishes between *listed* and *non-listed* dual-use items.

40. *Listed* items are those laid down in Annex I to that regulation. The list of items laid down in that annex is compiled on the basis of EU and Member State commitments accepted pursuant to international export controls arrangements. (32) According to Article 3(1) thereof, the items *listed* in Annex I *automatically* necessitate an export authorisation. (33)

41. *Non-listed* items encompass all those dual-use items that are not listed in Annex I to the Dual-Use Regulation. For those items, the EU legislature did *not* lay down an *automatic* export authorisation requirement. Instead, it left to the Member States the choice to restrict the exportation of such items for certain stated reasons. (34) They may do so in two ways.

42. First, the Member States may set up *national control lists* of dual-use items for which they require an export authorisation. They must inform the Commission of the content of those lists, and the Commission must then compile and publish them. (35) On the basis of those compiled national control lists, other Member States may impose an authorisation requirement. They must also inform their customs authorities and other relevant national authorities of the export restrictions introduced by other Member States. (36)

43. Second, the Member States may decide – on an ad hoc basis – that the exportation of certain dual-use items, not included in Annex I to the Dual-Use Regulation or a national list, may need to be subjected to an export authorisation. (37) That is the situation in the present case.

44. The authorisation procedure initiated by Flugzeugherstellerin does not relate to a national control list. Instead, it arises from an ad hoc assessment by the competent national authorities, based on criteria set by national law, that an authorisation is necessary in the particular situation at issue. To require such an authorisation, the competent national authorities must assess and establish (i) that the *particular transaction* before them concerns a 'dual-use item' within the meaning of Article 2(1) of the Dual-Use Regulation and (ii) that the *intended exportation* of that particular item may raise issues for security or for the protection of human rights, in accordance with Article 9(1) thereof.

45. These two steps are *separate*, and the relevant assessment criteria are *different*.

46. Accordingly, the qualification of a particular item as a 'dual-use item' is a preliminary issue that predates the determination of whether there is a need for an export authorisation. Such a qualification may be challenged before a competent court of the Member States.

47. I understand the first question of the referring court as precisely relating to such a concern: which criteria that court should take into account to assess whether the competent authorities correctly qualified the goods at issue as being '[also for] military purposes', and therefore to be of 'dual-use'.

48. Those criteria are, to my mind, different from the criteria that govern the second step outlined above, that is to say, the determination of whether to require an authorisation procedure and possibly prohibit the exportation of the item in question. As I will elaborate later, while some of the criteria referred to by the referring court pertain to the assessment of the first step (that is, whether an item is of ‘dual-use’), the other criteria highlighted by that court are relevant only for deciding on whether an authorisation procedure is required.

3. *What is not a dual-use item*

49. Before I turn to the guidance requested by the referring court, I find it necessary to reflect on the limits of the export controls framework laid down in the Dual-Use Regulation. As highlighted in Article 2(1) of that regulation, that framework applies only to items that are capable of use for ‘*both civil and military purposes*’. (38) Invariably, therefore, there are certain types of items that certainly *are* covered by that framework and others that clearly are *not*.

50. On the side of the spectrum of items *not* falling within the scope of the Dual-Use Regulation are *purely military items*. While such items, in theory, could fall within the scope of Article 207 TFEU, (39) today, they are listed in the Common Military List of the European Union and their exportation is governed by Council Common Position 2008/944.

51. Given that military items raise specific security concerns for the Member States, Article 346(1)(b) TFEU empowers them to derogate from certain parts of the Treaties in relation to such goods. The Court has dealt with such a situation only in the context of public procurement, (40) and has interpreted the notion of goods intended for ‘specifically military purposes’, as used in that provision, narrowly. According to the Court, such goods are those ‘specially designed and developed ... [*only for military*] purposes’, which is identifiable by virtue of their intrinsic characteristics. (41)

52. On the other side of the spectrum of items *not* falling within the scope of the Dual-Use Regulation are items of use for *purely civilian purposes*. This category of items must cover all those items which are definitively of use for civilian purposes and can *never also* be of use for military purposes. It should come as little surprise that no element of EU law characterises what that category entails. Contrasting the scope of that category with those of ‘dual’ or ‘military’ use, one would expect that purely civilian items are not capable of raising any security concerns for the Member States. The export of such items cannot therefore be restricted on the basis of the Dual-Use Regulation. However, as the French Republic observes, controls on their exportation may be imposed by virtue of Article 10 of the Common Rules for Exports Regulation on grounds of, among other reasons, public policy or public security. (42)

53. It follows that an item is not of ‘dual-use’, within the meaning of Article 2(1) of the Dual-Use Regulation, if it is either specifically designed and developed for military purposes or if it can never be of use ‘[also] for military purposes’. How to determine the latter category depends, however, on whether the expression of use ‘[also for] military purposes’ is given a *broad* or a *narrow* reading.

B. *The need for a broad interpretation*

54. In their written observations, the parties and interveners that have participated in these proceedings disagree as to the question of whether to attribute a broad or a narrow reading to the concept of use ‘[also for] military purposes’, within the meaning of Article 2(1) of the Dual-Use Regulation.

55. For its part, Flugzeugherstellerin advocates for a narrow interpretation. It argues that the concept of ‘dual-use items’ would otherwise be all-encompassing and include even the most basic civilian items such as rulers, notepads, cables or glue, as well as foodstuffs and clothing. That, in turn, would make it impossible for exporting companies to identify in a predictable manner which items are of ‘dual-use’ and which fall outside the scope of the export controls framework established by the Dual-Use Regulation.

56. For their part, the Austrian, Belgian, Greek, Spanish, French and Netherlands Governments and the Commission favour a broad interpretation. Those parties all consider that security and strategic considerations require the concept of ‘dual-use items’, as contained in the Dual-Use Regulation, to be sufficiently broad to allow them to react to foreign policy developments, as well as security and human rights considerations.

1. *Reasons for a narrow interpretation*

57. To my mind, the main argument in favour of a narrow interpretation arises from the fact that the Dual-Use Regulation is an instrument of the common commercial policy.

58. In the first place, that policy seeks to ensure that there are uniform rules that govern trade with third countries. (43) Within that exclusive EU competence, the Member States may, exceptionally, adopt unilateral acts in so far as they are empowered by the European Union to do so. (44) Therefore, as a derogation from the overarching idea of a *common* commercial policy, the scope of such empowerments must, in principle, be interpreted narrowly. (45) Consequently, inasmuch as the Dual-Use Regulation empowers, under Article 9 thereof, the Member States to prohibit or subject to authorisation the exportation of non-listed dual-use items, by the very nature of that empowerment as an exception to the need for common rules, the concept of ‘dual-use items’ should be read restrictively.

59. In the second place, according to Article 1 of the Common Rules for Exports Regulation, ‘the exportation of products from the Union to third countries shall be free’. Recital 4 of that regulation explains that exports are almost completely liberalised in all the Member States, which is why it is ‘possible to accept as a Union principle’ that exports to third countries are, in principle, not subject to any quantitative restriction. (46) The empowerment of the Member States to restrict exports of dual-use items on the basis of the Dual-Use Regulation is therefore an exception to the principle of free trade. That empowerment should, accordingly, be construed restrictively.

60. Those elements speak in favour of attributing a narrow interpretation to the concept of use ‘[also for] military purposes’, within the meaning of Article 2(1) of the Dual-Use Regulation.

2. *Reasons for a broad interpretation*

61. Generations of EU lawyers, including myself, were brought up with the belief that free trade is, in principle, good for everyone, and that it contributes to building global peace. Judging purely by the objectives pursued by recent legislative initiatives, that understanding might no longer exist. (47) Whereas as individuals we may be nostalgic, the Court does not enjoy such a privilege; rather the Court must interpret the law in its current context.

62. The world has reverted to the Latin maxim ‘*si vis pacem para bellum*’ (‘if you want peace, prepare for war’). Security concerns and preparedness for defence have suppressed arguments in favour of the benefits of free trade. From a policy perspective, the EU legislature may therefore decide that those concerns now hold equal value to the arguments in favour of free trade.

63. That shift in priorities is clearly noticeable in the difference between the recitals of the 1994 Dual-Use Regulation and those of the (current) Dual-Use Regulation. In the very first recital of that 1994 regulation, the EU legislature set out that it sought to establish a framework *primarily aimed at preserving the internal market*. International obligations and security considerations of the Member States followed suit only in the third and twelfth recitals thereof. Contrast that with the Dual-Use Regulation, which refers to *foreign policy and security considerations* at the very outset, and for which internal market considerations follow suit only in recital 27 thereof. (48)

64. The above does not imply that free trade is no longer an objective pursued by the EU legislature. The shift that I have highlighted merely indicates that the legislature now considers free trade and security

and strategic considerations to be of equal importance in its task of framing the common commercial policy.

65. That, in turn, may influence our understanding of the relationship between the Common Rules for Exports Regulation, on the one hand, and the Dual-Use Regulation, on the other hand: rather than viewing the latter as an exception to the former, the control of dual-use items could equally be read as a parallel framework to *strengthen* the objective of contributing to international peace and security, in conformity with Article 3(5) TEU. (49)

66. After all, both regulations were adopted on the basis of Article 207 TFEU, and thus pursuant to the same legislative procedure, such that it must be assumed that the EU legislature viewed these two regulations as equal ‘measures defining the framework for implementing the common commercial policy’. (50)

67. Viewed in such a context, the concept of ‘dual-use items’ does not necessarily need a narrow interpretation. To the contrary, only a broad interpretation would allow that concept to cover the vast array of strategic and security considerations that may come within the conduct of the Member States’ or the European Union’s foreign relations. In other words, the sliding scale of potentially covered items should be sufficiently large to account for the multiplicity of EU and Member State interests that may arise in the context of the conduct of the world at large. (51)

68. As the Netherlands Government, in essence, observes, in that way, the competent authorities of the Member States would be capable of adapting to the evolving strategic and security situations of the world at large. That entails, as the Belgian Government notes, that those authorities have discretion to consider that the exportation of a particular item does not raise such concerns at one particular point in time, but that those concerns may be present at a different point in time.

69. Understanding the concept of ‘dual-use items’ broadly does not mean that the Member States have unfettered discretion to introduce obstacles to free trade. Rather, the broad interpretation of that concept is counterbalanced by the limited scenarios in which the legislature has empowered the Member States to introduce restrictions on the exportation of such items; in the context of Article 9 of the Dual-Use Regulation, that is for security or human rights considerations only.

70. To my mind, the above are all convincing reasons to find, in the light of the current framework, in favour of attributing a broad interpretation to Article 2(1) of the Dual-Use Regulation. In the analysis that follows, I will, therefore, propose to answer the referring court’s questions by taking into consideration the need to understand the concept of ‘dual-use items’ broadly.

C. The first question referred for a preliminary ruling

71. By its first question, the referring court requests, in essence, guidance on the types of circumstances to be taken into account when assessing whether a civilian item can be used ‘[also for] military purposes’, such as to qualify it of ‘dual-use’ within the meaning of Article 2(1) of the Dual-Use Regulation.

72. Under point (a) of that question, the referring court asks whether such an item must be able to make a *substantial* contribution to the capabilities of the armed forces. Alternatively, it asks whether such use should be deemed to exist in the event that said item is used for the training of military personnel.

73. Under point (b) of the first question, the referring court then seeks guidance on whether it must take account solely of the condition of the item when it is exported to a third country, or whether it must also take account of (i) the military capabilities of the end-user or recipient in the third country to which the item in question is exported; (ii) the situation in that third country; (iii) the possibility of the item being repurposed; or (iv) the risk of the item being diverted.

1. *A contribution to the capabilities of the armed forces need not be substantive*

74. Flugzeugherstellerin considers it necessary that an item that is of use '[also for] military purposes' is one with a clear military technical component or for which its military use is at least as significant as its civilian use. Accordingly, it argues that an item that is designed exclusively for civilian purposes and which can also be used by a military institution solely for a type of training that is no different from comparable civilian training is not capable of use '[also for] military purposes'.

75. The Netherlands Government proposes that an item that is of use '[also for] military purposes' must make a significant contribution to the capabilities of the armed forces. However, it considers that such an assessment requires a 'dynamic' approach, taking account of developments in the military field (such as the use of civilian drones in combat operations). For its part, the Commission considers that the contribution to a third country's military capabilities need not be significant, but that such a contribution must exist. That institution argues that the threshold should be that the item contributes in a 'relevant' manner to the capabilities of the armed forces.

76. By contrast, the Greek, Spanish and French Governments consider, in essence, that any link to a military context should be sufficient to render an item a 'dual-use item'.

77. To my mind, it is clear that Article 2(1) of the Dual-Use Regulation makes no express reference to a particular contributory threshold that an item must make to the armed forces of a third country so as to be considered of use '[also for] military purposes'.

78. In fact, if such a threshold were required before an item could be classified as being of use '[also for] military purposes', a large number of exported items capable of raising security or human rights concerns would not necessarily be covered by the scope of the Dual-Use Regulation. That would undermine the effectiveness of the export controls framework.

79. Assuming, however, that such a threshold should exist, I find it difficult to see how an item's contribution to the armed forces of a third country – irrespective of whether it is substantial, minor or zero – could be assessed in the first place. Even if it were possible to quantify that type of contribution for a particular item (*quod non*, in my view), such an element would require both economic operators (for compliance purposes) and the national authorities of the Member States (for enforcement purposes) to assess that contribution against a particular threshold, and by reference to the design and structure of the armed forces of a third country.

80. That difficulty is not just theoretical. Transposed to the factual circumstances of the dispute in the main proceedings, while it would, to my mind, be easy to establish that the provision of aircraft for flight training to (military) pilots and the possible use of that aircraft for reconnaissance or visual surveillance purposes contributes to the capabilities of Myanmar's armed forces, it is quite a different question to assess with any certainty whether the exportation of that training aircraft contributes 'significantly' or 'relevantly' to those capabilities.

81. Should the concept of use '[also for] military purposes' therefore be interpreted as relating not to the contribution of an item to the *capabilities* of the armed forces but rather to the *tasks* ordinarily carried out by those forces?

82. While that interpretation would give meaning to the concept of 'military purposes' and would allow for a specific link to be drawn between the item in question and its possible use by the armed forces of a third country, it is again not without its flaws. That is because, if anything more than a general link to the tasks of those forces is drawn, the competent authorities would, in the first place, have to establish *what tasks* those forces ordinarily perform. However, while it may be possible to determine, with some certainty, what those tasks are for the armed forces of the Member States, (52) it is far from simple to make such a determination for the armed forces of a third country. After all, those forces may not be organised in the same way as those of the Member States. They may be required to perform certain activities not ordinarily associated with those forces in the Member States, (53) or their activities may be deeply entrenched with those of civilian companies. (54)

83. Accordingly, it appears to me that the only reading that would ensure the adaptability and responsiveness required by the export controls framework, as established by the Dual-Use Regulation, to the various potential uses of a ‘dual-use item’ in a third country is the one essentially proposed by the Greek, Spanish and French Governments: an item is capable of use ‘[also for] military purposes’ whenever there exists *any link* between the item’s potential uses and the armed forces of the third country in question.

84. For those reasons, I propose that the Court answer point (a) of the referring court’s first question by interpreting Article 2(1) of the Dual-Use Regulation as not requiring that an item substantively contribute to the military capabilities of the end-user for that item to be capable of use ‘[also for] military purposes’. In that sense, the use of an item for the basic training of military pilots, even where said training is the same as the training of civilian pilots, suffices to consider that item as capable of use ‘[also for] military purposes’.

2. *The objective characteristics of an item alone determine its potential ‘dual-use’*

85. It follows from the answer to point (a) of the first question referred that the specific use and significance of an item for the military forces of the country of destination does not matter in determining whether the item to be exported is capable of use ‘[also for] military purposes’.

86. Rather, the very text of Article 2(1) of the Dual-Use Regulation itself suggests that it suffices that an item be *objectively capable of use* for such purposes. That text, in the various language versions that I have consulted, clearly highlights the *capability of using* an item for *both* civilian and military purposes. (55)

87. That wording seems to imply that there need not be actual evidence of *who* is going to use an item (that is, the determination of the end-user) or *how* that item is going to be used in a particular context (that is, the determination of its end-use), but that the competent authorities must be satisfied that the item in question is *objectively capable of use* ‘[also for] military purposes’. (56)

88. As the Austrian Government highlights, that means that the determination of whether an item is capable of use ‘[also for] military purposes’ must be informed by the item’s *potential capabilities*.

89. To my mind, such capabilities may exist in three scenarios. In the first place, an item may be *dual-use* in the literal sense of that word and so may be *simultaneously* of use for civilian and military purposes. Modern telecommunications infrastructure, which powers both civilian and military communications systems concurrently, is an obvious example of this type of potential duality of use. Next, and in the second place, an item may have alternate uses. That is to say that the item in question may be used for either civilian or military purposes and be capable of switching between those purposes without technical modification: imagine a lorry that carries potatoes in one direction and rifles in another direction. That category of dual-use items is therefore *dual-capable* by their very nature without the need for repurposing or modification. Moreover, and in the third place, there may be dual-use items that are specifically designed and intended for civilian purposes but which may be repurposed for military purposes. This category of dual-use items is also referred to as *dual-purpose* items. (57) The case of civilian drones (and their parts) in military combat, which the Netherlands Government refers to in its observations, is, to my mind, a topical example of such a dual-purpose dual-use item. (58)

90. That brings me to point (b) of the referring court’s first question. In relation to that part of the first question, Flugzeugherstellerin and the Austrian, Belgian, Spanish, French and Netherlands Governments all consider that factors such as the capabilities of the end-user, the situation in the country of destination, the intended end-use and the existence of a risk of circumvention are irrelevant for the purposes of determining whether an item is capable of use ‘[also for] military purposes’, since those elements are taken into account for the purposes of assessing whether an authorisation for the exportation of the item is needed.

91. I agree.

92. As I have explained above, in the determination of whether an item is capable of use ‘[also for] military purposes’, the competent authorities must take account solely of the objective and potential usage capabilities of the item in question.
93. For that purpose, it is clear that account must be taken of the physical and technical characteristics that the item has at the time of exportation. Those characteristics may include also the objective possibility of repurposing that item.
94. However, and as the Austrian, Belgian, Spanish and French Governments and the Commission observe, in essence, that does not mean, at least not at this stage, that the competent authorities should have regard to the intentions underlying that item’s design, its intended use, or its development. (59)
95. Moreover, contrary to what Flugzeugherstellerin claims, the foregoing approach, centred on an item’s physical characteristics, will not render a large number of civilian items at risk for the need to obtain an export authorisation.
96. To my mind, that concern exists only if the question of whether a non-listed item is of ‘dual-use’, on the one hand, is confused with the question of whether the exportation of that item should be subjected to the export authorisation procedure, on the other. (60)
97. As all the intervening governments, the Commission and even Flugzeugherstellerin itself explain, it is solely at the point of this *second step* that considerations such as the end-user, the (situation in the) country of destination, the potential for diversion, and other factors may become relevant. (61) That is because it falls to the competent national authorities to explain, as regards the exportation of the particular item at issue, *why*, in the specific factual context before it, an export authorisation is necessary.
98. While the referring court’s question does not relate to that obligation, I wish to observe briefly that it arises from its order for reference and the observations of the Austrian Government that the competent Austrian authorities sought to rely on the empowerment contained in Article 9 of the Dual-Use Regulation to require an export authorisation. That provision permits the Member States to restrict the exportation of a *non-listed* ‘dual-use’ item *inter alia* on the basis of that item’s potential for human rights violations.
99. Where that power is exercised, a statement of reasons is required to ensure the effective judicial protection of the economic operator concerned. (62) Therein, the competent Austrian authorities must explain *why*, in the particular context before them, they consider that the goods at issue raise potential human rights considerations if exported. Naturally, in drawing that link between the exportation of the item in question and the concerns at issue, the competent authorities hold a margin of discretion, which, to my mind, is greater than in an internal context. (63)
100. Returning to my trouser button example from the beginning of this Opinion, the competent authorities of the Member States could consider such buttons to be non-listed dual-use items. Nevertheless, those authorities would not be permitted to control the trade of those buttons on the basis of Article 9 of the Dual-Use Regulation *unless* they were able to establish a link between the exportation of those buttons and the security and/or human rights considerations of the Member States or the European Union as a whole.
101. It then falls on the competent national courts to verify the correctness of that determination. While that does not mean second-guessing the security and strategic considerations put forward, the statement of reasons provided by the competent authorities must allow those courts to verify, possibly in combination with the relevant procedural file, the elements which led those authorities to consider the restriction at issue capable of and necessary for achieving the desired aim. (64)
102. Whether that is the case for the purpose of the dispute in the main proceedings falls to the national court to determine. (65)

103. In conclusion, and in reply to point (b) of the referring court’s first question, I propose that the Court find that, in assessing whether an item can be used ‘[also for] military purposes’, account should be taken solely of the item’s objective capabilities by reference to its physical characteristics at the time of exportation. For that determination, account need not be taken of the military capabilities of the end-user or recipient in the third country to which the item is to be exported, of the situation in the third country, of the possibility of the end-user to repurpose the item or of the risk of the item being diverted – those concerns are relevant solely for deciding whether an authorisation may be required for the exportation of that item.

IV. Conclusion

104. I propose that the Court answer the first question referred for a preliminary ruling by the Bundesverwaltungsgericht (Federal Administrative Court, Austria) as follows:

Article 2(1) of Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items

must be interpreted as meaning that:

- for determining whether an item may be considered to be of use ‘[also for] military purposes’, where that item does not substantively contribute to the capabilities of the armed forces, it suffices that that item be capable of use for the training of military pilots, even if that training corresponds to the training of civilian pilots;
- in assessing whether an item can be used ‘[also for] military purposes’, account should be taken solely of the item’s objective capabilities by reference to its physical characteristics at the time of exportation; and
- in assessing whether an item is capable of use ‘[also for] military purposes’, account need not be taken of the military capabilities of the end-user or recipient in the third country to which the item is to be exported, of the situation in the third country, of the possibility of the end-user to repurpose the item or of the risk of the item being diverted – those concerns are relevant solely for deciding whether an authorisation may be required for the exportation of that item.

¹ Original language: English.

ⁱ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

² See Karpenstein, U., *Europäisches Exportkontrollrecht für Dual-Use Güter*, Boorberg, Stuttgart, 1998, p. 112. At that point in time, Nikita Khrushchev was the First Secretary of the Communist Party of the Soviet Union.

³ Regulation of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (OJ 2021 L 206, p. 1).

⁴ See point 1.1 of the order for reference.

⁵ Paragraphs 3 to 13 of the AWG are titled as follows: 3 – ‘General principles’; 4 – ‘Compliance with international obligations’; 5 – ‘Compliance with international arms export control mechanisms’; 6 – ‘Respect for human rights and international humanitarian law’; 7 – ‘Impact on the domestic situation in the country of destination’; 8 – ‘Maintaining peace, security and regional stability’; 9 – ‘Impact on security interests and foreign relations of Austria, and on the security interests of other EU Member States’; 10 – ‘Implications for terrorist activities and international crime’; 11 – ‘Risk of misuse for undesirable purposes’; 12 – ‘Sustainable development’; and 13 – ‘End-use’.

⁶ According to the information in the national file, and specifically p. 3 of the Bescheid des Bundesministers für Arbeit und Wirtschaft (Federal Minister for Labour and Economy, Austria), document 2024-0.266.516 of 18 July 2024, those

conditions were (i) prior approval from the Bundesminister für Digitalisierung und Wirtschaftsstandort (Federal Minister for Digital and Economic Affairs, Austria) for the export of the requested goods and for goods produced using the requested technology, and (ii) prior approval for the conversion of the requested goods and for goods produced using the requested technology. That document also explains that said conditions were intended to preclude the risk of the goods in question from being diverted for undesirable purposes and in connection with serious human rights violations.

[7](#) I should observe that the Austrian Government explains that the AWG does not provide for ‘extensions’ of (individual) export authorisations, but only for the initiation of a new authorisation procedure. That position also appears to be supported by the interpretation of the Bundesverwaltungsgericht (Federal Administrative Court) in its judgment of 3 January 2022 in Case W157 2242760-1/2 E, ECLI:AT:BVWG:2022:W157.2242760.1.00 (‘the BVwG judgment of 3 January 2022’).

[8](#) See the BVwG judgment of 3 January 2022, paragraph 3.2.5.

[9](#) See judgment of 3 April 2023 in Case W290 2255924-1/7E, ECLI:AT:BVWG:2023:W290.2255924.1.00 (‘the BVwG judgment of 3 April 2023’),.

[10](#) The BVwG judgment of 3 April 2023, paragraph 2.2.1.

[11](#) See Federal Minister for Labour and Economy, document 2024-0.266.516 of 18 July 2024, p. 33.

[12](#) See Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ 2008 L 335, p. 99). As for the types of items falling thereunder, see Common Military List of the European Union adopted by the Council on 24 February 2025 (equipment covered by Council Common Position 2008/944) (updating and replacing the Common Military List of the European Union adopted by the Council on 19 February 2024) (CFSP) (OJ C, C/2025/1499) (‘the Common Military List of the European Union’).

[13](#) Article 3a of Council Regulation (EU) No 401/2013 of 2 May 2013 concerning restrictive measures in view of the situation in Myanmar/Burma and repealing Regulation (EC) No 194/2008 (OJ 2013 L 121, p. 1), as amended, prohibits the sale, supply, transfer or export, directly or indirectly, of dual-use goods and technology listed in Annex I to the Dual-Use Regulation ‘if those items are or may be intended, in their entirety or in part, for military use, military end-user or the Border Guard Police’.

[14](#) ‘The Common Rules for Exports Regulation’.

[15](#) Emphasis added.

[16](#) While the first dual-use regulation, adopted in 1994, still covered solely the trade in ‘goods’ (see Article 2(a) of Council Regulation (EC) No 3381/94 of 19 December 1994 setting up a Community regime for the control of exports of dual-use goods (OJ 1994 L 367, p. 1) (‘the 1994 Dual-Use Regulation’), the scope of that framework was extended in 2009 to cover the trade in any dual-use ‘items’, ‘including software and technology ... and ... all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices’ (see Article 2(1) of Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ 2009 L 134, p. 1)).

[17](#) See Article 1(1) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1), which refers solely to the concept of ‘goods’, and judgments of 14 July 1977, *Bosch* (1/77, EU:C:1977:130, paragraph 4), and of 18 April 1991, *Brown Boveri* (C-79/89, EU:C:1991:153, paragraph 21), in which the Court considered that tariff classification does not extend to intangible items such as software.

[18](#) Emphasis added

[19](#) See, for example, in the area of the common foreign and security policy, Article 2(2) of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010

(OJ 2012 L 88, p. 1) or Article 1(a) of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 1), and, as regards the framework governing the screening of foreign direct investments, Article 4(15)(a) and Article 19(2)(a)(iii) of Regulation (EU) 2026/1386 of the European Parliament and of the Council of 17 June 2026 on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 (OJ L, 2026/1386).

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- [20](#) See Article 3(20) of Proposal for a Regulation of the European Parliament and of the Council on establishing a framework of measures to facilitate the transport of military equipment, goods and personnel across the Union (COM(2025) 847 final) and White Paper on options for enhancing support for research and development involving technologies with dual-use potential (COM(2024) 27 final), p. 1 and footnote 1.
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- [21](#) Førland, T.E. refers to the ensuing system of export controls adopted by Western allies, institutionalised in the context of the Coordinating Committee (also known as COCOM), as 'peacetime economic warfare' (see "Economic warfare" and "strategic goods": A conceptual framework for analysing COCOM', *Journal of Peace Research*, Vol. 28:2, 1994, pp. 191 to 204, at p. 192. For a general overview of historical developments in this area, see also Karpenstein, U., *Europäisches Exportkontrollrecht für Dual-Use Güter*, Boorberg, Stuttgart, 1998, pp. 154 to 175.
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- [22](#) For example, the Treaty on the Non-Proliferation of Nuclear Weapons (729 UNTS 161), the Biological Weapons Convention (1015 UNTS 163) and the Chemical Weapons Convention (1974 UNTS 45), ratified in 1970, 1972, and 1997 respectively, which aim to prevent the proliferation of nuclear, biological and toxic chemical weapons and technologies.
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- [23](#) These arrangements include those listed in Annex I to the Dual-Use Regulation, that is to say, the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group, the Wassenaar Arrangement, and the Chemical Weapons Convention.
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- [24](#) The 1994 Dual-Use Regulation was adopted on the basis of Article 113 TEC (now Article 207 TFEU).
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- [25](#) Council Decision 94/942/CFSP of 19 December 1994 on the joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union concerning the control of exports of dual-use goods (OJ 1994 L 367, p. 8) ('the 1994 CFSP Decision').
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- [26](#) See the second paragraph of Article 1 of the 1994 CFSP Decision.
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- [27](#) See the first and third recitals of the 1994 Dual-Use Regulation.
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- [28](#) That list of 'dual-use' items was set out in the 1994 CFSP Decision.
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- [29](#) See the fourth recital of the 1994 Dual-Use Regulation.
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- [30](#) See recital 5 of Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology (OJ 2000 L 159, p. 1). See also Council Decision of 22 June 2000 repealing Decision 94/942 (OJ 2000 L 159, p. 218).
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- [31](#) For a detailed overview of the political and legislative process involving the 1994 Dual-Use Regulation, the 1994 CFSP Decision and the development of an EU dual-use export controls framework, see, inter alia, Koutrakos, P., *Trade, Foreign Policy and Defence in EU Constitutional Law: The Legal Regulation of Sanctions, Exports of Dual-use Goods and Armaments*, Hart Publishing, London, 2001, pp. 93 to 112, and Davis, I., *The Regulation of Arms and Dual-Use Exports: Germany, Sweden and the UK*, Oxford University Press, Oxford, 2002, pp. 46 to 82.
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- [32](#) See Article 17(1)(a) of the Dual-Use Regulation. See also the introductory note to Annex I thereto, which explains that the 'list of dual-use items contained in this Annex implements internationally agreed dual-use controls, including the Australia Group ..., the Missile Technology Control Regime ..., the Nuclear Suppliers Group ..., the Wassenaar Arrangement ... and the Chemical Weapons Convention'.
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- [33](#) See Article 3(1) of the Dual-Use Regulation which lays down that ‘an authorisation *shall* be required for the export of dual-use items listed in Annex I’ (emphasis added).
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- [34](#) Under Article 9(1) of the Dual-Use Regulation, the export of a dual-use item may be prohibited or subject to an authorisation requirement ‘for reasons of public security, including the prevention of acts of terrorism, or for human rights considerations’.
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- [35](#) See Article 9(4) of the Dual-Use Regulation. See, most recently, Compilation of national control lists under Article 9(4) of Regulation 2021/821 (OJ C, C/2026/3577).
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- [36](#) See Article 10(3) of the Dual-Use Regulation.
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- [37](#) See Article 9(1) and (2) of the Dual-Use Regulation. See also Article 10(1) thereof, pursuant to which a Member State may require an authorisation for an item not listed in Annex I to that regulation if another Member State has included said item on its national control list.
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- [38](#) Emphasis added.
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- [39](#) Article 207(1) TFEU explains that it applies to the trade in goods without distinguishing between the *types* of goods falling thereunder. See judgment of 17 October 1995, *Leifer and Others* (C-83/94, EU:C:1995:329, paragraph 11), explaining that the nature of a particular good is not capable of taking it outside the scope of the common commercial policy.
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- [40](#) See judgments of 8 April 2008, *Commission v Italy* (C-337/05, EU:C:2008:203), and of 7 June 2012, *Insinöörtoimisto InsTiimi* (C-615/10, EU:C:2012:324). In those cases, the Court considered that the items at issue – certain types of helicopters and tilttable turntable equipment – were not to be intended for purely military purposes, which is why the derogation from the rules on public procurement was not deemed justified.
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- [41](#) See judgment of 7 June 2012, *Insinöörtoimisto InsTiimi* (C-615/10, EU:C:2012:324, paragraph 44).
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- [42](#) Echoing the views of Advocate General Jacobs, the Court has interpreted the concept of ‘public security’ to extend also to external security considerations, including those taken in a foreign policy context, on the basis that ‘it is becoming increasingly less possible to look at the security of a State in isolation, since it is closely linked to the security of the international community at large, and of its various components’ (see judgments of 17 October 1995, *Werner*, C-70/94, EU:C:1995:328, paragraph 26, and of 17 October 1995, *Leifer and Others*, C-83/94, EU:C:1995:329, paragraph 27).
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- [43](#) See, to that effect, Article 207(1) TFEU.
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- [44](#) See Article 2(1) TFEU.
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- [45](#) See, to that effect, the interpretation of the Court adopted in the context of judgment of 4 October 2024, *Confédération paysanne (Melons and tomatoes from Western Sahara)* (C-399/22, EU:C:2024:839, paragraphs 53 and 54).
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- [46](#) That principle could also be understood as an expression of the idea that trade from and to the European Union should be free, as expressed in Article 3 TEU (‘in its relations with the wider world, the Union shall ... contribute to ... free and fair trade’) and Article 206 TFEU (‘by establishing a customs union ... the Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade’). See also, by analogy, Article 1(2) of Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ 2015 L 123, p. 33), which, in the relevant part, lays down that ‘imports into the Union ... shall take place freely and accordingly shall not be subject to any quantitative restrictions’, which reflects the other side of the same coin of the idea contained in Article 1(1) of the Common Rules for Exports Regulation.
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- ⁴⁷ See, for example, recital 1 of Regulation (EU) 2026/1384 of the European Parliament and of the Council of 17 June 2026 addressing the negative trade-related effects of global overcapacity on the Union steel market and amending Regulation (EU) 2020/2170 (OJ L, 2026/1384) (referring to the need to restrict steel imports for reasons of the ‘Union’s economic security’) and recital 6 of Regulation (EU) 2026/1386 of the European Parliament and of the Council of 17 June 2026 on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 (OJ L, 2026/1386) (referring to ‘the integration of global economies, combined with war and geopolitical tensions, [leading] to the emergence of new risks that need to be addressed by the Union and the Member States’). See, also, my Opinion in *Xella Magyarország* (C-106/22, EU:C:2023:267, points 3 to 5).
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- ⁴⁸ See recital 2 of the Dual-Use Regulation (for the first mention of strategic and security considerations), recital 5 of that regulation (for international commitments) and recital 27 thereof (for internal market considerations).
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- ⁴⁹ In that sense, recital 39 of the Dual-Use Regulation explains that ‘Member States and the Commission should enhance their contribution to the activities of multilateral export control regimes. Member States and the Commission should also support those regimes in developing robust export controls as a global basis and model for international best practice, and *an important tool for ensuring international peace and stability*’ (emphasis added).
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- ⁵⁰ See Article 207(2) TFEU.
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- ⁵¹ In the words of Advocate General Jacobs, ‘security is ... a matter of perception rather than hard fact’, with differences in the geography and history of each of the Member States dictating what strategic and security interests may be at play in a particular situation. See his Opinion in *Commission v Greece* (C-120/94, EU:C:1995:109, p. 1528, point 54).
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- ⁵² See, by analogy, judgment of 15 July 2021, *Ministrstvo za obrambo* (C-742/19, EU:C:2021:597, paragraph 45), in which the Court determined, in essence, that the tasks of the armed forces of the Member States extend to the protection of their ‘territorial integrity’ and the safeguarding of a Member State’s ‘national security’.
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- ⁵³ See, in that respect, Delegation of the European Union to the United Nations and other international organisations in Geneva, Statement at the 114th session of the International Labour Conference, Committee on Application of Standards, Turkmenistan C.105, 10 June 2026, available at: https://www.eeas.europa.eu/delegations/un-geneva/ilc114-eu-statement-committee-application-standards-turkmenistan-c105_en (highlighting that military conscripts are used in the annual cotton-picking harvest in Turkmenistan).
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- ⁵⁴ See, in that respect, United States Department of State, Bureau of International Security and Nonproliferation, ‘Military-civil fusion and the People’s Republic of China’, 28 May 2000, available at: <https://2017-2021.state.gov/remarks-and-releases-bureau-of-international-security-and-nonproliferation/mcf-and-the-prc/> (taking the position that the Chinese Communist Party ‘is systematically reorganising the Chinese science and technology enterprise to ensure that new innovations simultaneously advance economic and military development’).
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- ⁵⁵ See the German- (‘Güter ... die ... verwendet werden können’), English- (‘items ... which can be used’), Spanish- (‘productos ... que puedan destinarse a usos’), French- (‘produits ... susceptibles d’avoir une utilisation’), Croatian- (‘roba ... koja se može upotrebljavati’) and Italian-language (‘prodotti ... che possono avere un utilizzo’) versions of Article 2(1) of the Dual-Use Regulation.
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- ⁵⁶ See, in that context, the example provided by Karpenstein, U., who explains that, in the mid-1980s, Iraq ordered several hundred remote-control systems for toy cars from a West German toy manufacturer in order to improve the accuracy of its outdated Scud missiles. See Karpenstein, U., *Europäisches Exportkontrollrecht für Dual-Use Güter*, Boorberg, Stuttgart, 1998, p. 112.
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- ⁵⁷ See, in that regard, Azcárate Ortega, A., ‘Not a rose by any other name: Dual-use and dual-purpose space systems’, *Lawfare*, 5 June 2023, available at: <https://www.lawfaremedia.org/article/not-a-rose-by-any-other-name-dual-use-and-dual-purpose-space-systems>, and Bennett, C.J.P., ‘The dual-use conundrum of the Lisbon Treaty regarding space governance: Solutions through international legal interpretation?’, *Global Policy*, Vol. 17, 2025, pp. 1 to 12, at p. 5.
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- ⁵⁸ With reference to the restrictive measures imposed on the Russian Federation in view of its actions to destabilise Ukraine, the Netherlands Government explains that what were previously considered off-the-shelf chips for the use in civilian

drones are now considered capable of making an essential contribution to military combat operations (see, in that regard, Regulation No 833/2014, Annex VII, Part B, CN codes 8541 10, 8541 21 and 8541 29, which cover chip components).

[59](#) That conclusion also aligns with the definition of ‘usable in’, ‘usable for’, ‘usable as’ or ‘capable of’ provided in the Equipment, Software and Technology Annex to the Missile Technology Control Regime, available at https://www.mtcr.info/download/pictures/a8/bcr8jdpfbqag5rm5m1i3atrjptggwf/mtcr-tem-technical_annex_2024-03-14.docx.pdf, which, in the relevant part, describes those terms as meaning ‘equipment, parts, components, materials or “software” which are suitable for a particular purpose. There is no need for the equipment, parts, components or “software” to have been configured, modified or specified for the particular purpose.’

[60](#) See, in that respect, points 44 and 45 of this Opinion, in which I explain two steps to be undertaken when subjecting an item to the export authorisation requirement under Article 9(1) of the Dual-Use Regulation: (i) classifying an item as ‘dual-use’ and (ii) assessing whether the exportation of the item in question should be subject to an export authorisation and/or should it be prohibited.

[61](#) For the sake of completeness, I observe that Article 15(1) of the Dual-Use Regulation, which concerns granting an authorisation or prohibiting a transit of a dual-use item, is worded broadly to allow Member State authorities to take account of all relevant considerations, including international obligations and commitments of the European Union and its Member States (point (a)), considerations of national foreign policy and security (point (c)) and considerations about intended end-use and the risk of diversion (point (d)).

[62](#) See, *ex multis*, by analogy, judgment of 18 July 2013, *Commission and Others v Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 116 and the case-law cited).

[63](#) See, to that effect, judgments of 17 October 1995, *Werner* (C-70/94, EU:C:1995:328, paragraph 28), and of 17 October 1995, *Leifer and Others* (C-83/94, EU:C:1995:329, paragraph 29).

[64](#) See, by analogy, judgment of 18 July 2013, *Commission and Others v Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 125 and 126).

[65](#) See, *ex multis*, by analogy, judgment of 18 July 2013, *Commission and Others v Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 119 and the case-law cited).