



German case-law on catch-all

On 15 July 2022, the Dresden Higher Regional Court sentenced a business man to a total term of imprisonment of 3 years and 3 months.



The sentence was pronounced on seven counts of the commercial export of dual-use items without a license pursuant to Article 4(1) of EU Regulation 428/2009. In addition, it ordered the confiscation of the value of proceeds of crime in the amount of EUR 985,542.00 against the confiscation participant ELM GmbH in favour of the Federal Government.

After an 11-day main hearing, the court considered it proven that the accused, as sole managing director and shareholder of ELM-Gesellschaft für Handel u. Transfer GmbH, had exported unlisted laboratory equipment to recipients in the Russian Federation without a licence from the Federal Office of Economics and Export Control (BAFA) on seven occasions in the period from 2017 to 2020. This was despite the fact that he had been informed by BAFA that sensitive information was available on these recipients and that he had therefore known that a licence was required for the export. The senate assessed the defendant's actions as commercial because he had obtained a not only temporary source of income of some weight through the offences.

In sentencing the accused, the court took into account the pre-trial detention he had suffered, the fact that he did not have a criminal record, the fact that his long-standing business connections created a certain dependency and that his company was insolvent. The court also took the accused's confession into account in a mitigating manner, but expressly pointed out that the accused's statements in this respect had been extremely meagre. The long period of time during which the offence was committed, the considerable number of offences as well as the fact that, as the court emphasised, violations of the regulations of the Foreign Trade and Payments Act have a high damage potential and that the court was convinced that the accused, contrary to his statements, was aware that the transactions in question would not have been approved and that he had therefore tried to conceal the true recipient by specifically indicating innocuous recipients.

With regard to the money collected by the confiscation participant ELM GmbH, confiscation was ordered for the full amount. The court did not follow the defence's argumentation that only five-figure profits remained with ELM. According to section 73 d, paragraph 1, sentence 2 of the German Criminal Code, expenses incurred for criminal offences committed intentionally were not deductible by law.

The arrest warrant was suspended subject to conditions.

Reference: OLG Dresden, 15 July 2022, Az.: 4 St 1/22

Source: OLG Dresden