

France

Encryption Controls

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dual use

encryption controls in France

1. Legal frame
2. Basics
3. Procedures in force
4. Penalties
5. Practical side

1. Legal frame

- **LAW** n°2004-575 of 21 June **2004** related to the confidence in the digital economy (official publication 22 June 2004)
 - *Mainly Articles 29 to 36*
- **DECREE** n°2007-663 of 2 May **2007** related to the implementation of articles 30, 31, and 36 of the Law n°2004-575 (official publication du 4 mai 2007)
- **ORDER** of 25 May **2007** specifying the form and content of the files for the declaration and request for autorisation regarding the encryption means and services (official publication 3 June 2007)



Cont. Legal frame

- **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 (official publication L134, 29 May 2009)
 - As **amended** by REGULATION (EU) No **1232/2011** OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 November 2011 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (official publication L326, 8 December 2011)
- *NB* List in the EU Reg 428/2009 and update > French List
What will be decontrolled by the EU Reg, will be also decontrolled in France, even if the French texts of 2007 are still in force
- **DECREE** n°2001-1192 of 13 December 2001 related the control of exports, transfer and import of dual use items
 - Following the 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



2. Basics

- **Using** crypto means is **free** in France.
 - According to article 30-I of the Law 2004-575 (21 June 2004),
- Providing /selling, transferring (intra-UE), importing and exporting **crypto means** providing only **authentication and integrity controls** is also **free**
- For **all other** crypto means, providing, importing and exporting is **regulated** in France
- **Confidentiality** is submitted either by the declaration or the authorization clearance
- The administration called **ANSSI** records the declarations and investigates the authorization requests



3. Procedures in force

- 4 cases
- Administration in charge
- Waiting time



- **4 cases**

- **Freedom**

- Use
- Exemptions as provided in Decree n°2007-663

- Plain **Declaration**


- **Declaration** with the ANSSI validation

- Mass market status

- Request for prior **Authorization**



Freedom

- Use
- Exemptions as provided in Decree 2007-663
 - Article 1 of the Decree
 - Providing/selling, transfer (intra-EU) and export of the encryption means and services as listed in ANNEX 1 of the Decree
 - This ANNEXE 1  ANNEXE I of 428/2009



cont. **Freedom**

- Exemptions as provided in Decree n°2007-663
 - 15 types of items, listed in 7 categories mainly
 - » Category A and Category B: items for which all operations are exempted
 - » Mobile phone, smart cards, tv, anti-copy items, ...
 - » Category C: items for which providing, transfer (to and from EU) or import is exempted (not export)
 - » Category D: items for which providing, transfer from UE and import is exempted (export and transfer to EU not exempted)
 - » Category E: items for which import or transfer from EU is exempted
 - » *crypto means solely used by people or solely for demonstration purpose*
 - » Category F: items for which transfer to EU or export is exempted
 - » Below 5A002a1a criterias
 - » Below 5A002a6 criterias
- Charts



Chart: exemptions from ANSSI clearance

Type of items Category A	NO ANSSI PROCEDURE P : providing/selling, I : import , E : export Ti : transfer from EU Member State Te : transfer to EU Member State
<ul style="list-style-type: none">• Cartes à puce personnalisées (grand public)• équipements de réception de télévision grand public,• moyens de cryptologie utilisés dans les transactions bancaires,• radiotéléphones portatifs ou mobiles destinés à l'usage civil,• moyens matériels ou logiciels spécialement conçus pour assurer la protection des logiciels contre la copie ou l'utilisation illicite,• équipements autonomes de lecture de données audio et vidéo	P, I, E, Ti, Te

Cont. Chart: exemptions from ANSSI clearance

<p>Type of items</p> <p>Categories C and D</p>	<p>NO ANSSI PROCEDURE</p> <p>P : providing/selling, I : import , E : export</p> <p>Ti : transfer from EU Member State</p> <p>Te : transfer to EU Member State</p>
<ul style="list-style-type: none">• <i>produits basés sur les normes Wireless Fidelity (Wifi) (IEEE 802.11abg) et Bluetooth (IEEE 802.15.1, 802.15.3, 802.15.4),</i>• <i>station de base de radiocommunications cellulaires civiles (BTS)</i>	<p>P, I, Ti, Te</p>
<ul style="list-style-type: none">• <i>moyens de cryptologie spécialement conçus et limités pour administrer, gérer, configurer un système d'information et ne permettant pas de chiffrer d'autres données</i>	<p>P, I, Ti</p>

Cont. Chart: exemptions from ANSSI clearance

Type of items Categories E and F	NO ANSSI PROCEDURE P : providing/selling, I : import , E : export Ti : transfer from EU Member State Te : transfer to EU Member State
<ul style="list-style-type: none">• <i>moyens de cryptologie destinés exclusivement à des fins de développement, de validation ou de démonstration</i>	I, Ti
<ul style="list-style-type: none">• <i>moyens accompagnant les personnes physiques et destinés à l'usage exclusif de cette personne</i>	Te, Ti, I, E
<ul style="list-style-type: none">• 5A002a1a : longueur de clé < à 56 bits ou taille < 512 bits• 5A002a6 : bande passante < à 500mhz, ...	Te, E



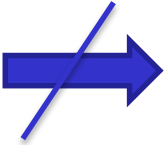
Plain **declaration**

- Article 3 of the Decree 2007-663
- Mainly, this procedure is requested
 - Before selling, transfer from EU and import of crypto means *not exclusively* providing authentication *or integrity control*

and



cont. Plain **declaration**

- And this procedure is also requested
 - Before transferring to EU or exporting items listed in Annex 2 of this Decree
 - This annex 2  Annex II of 428-2009



cont. Plain **declaration**

- Annex 2 of the decree 2007-663
 - When transferring to the EU
 - When exporting to
 - Australia, Canada, USA, Japan, New-Zeland, Norway or Switzerland,
 - 5A002.a.1 (of Annex I of EU Reg 428-2009)
 - 5A002.a.6 (of Annex I of EU Reg 428-2009)



cont. Plain **Declaration**

- Administrative and technical parts
 - Order 2007
 - website



Declaration with the ANSSI validation

Mass market status

- *Ask* for the MM status *before* exporting items as defined in Annex 2 of the Decree 2007-663
- ANSSI must approve this status



cont. **Declaration** with the ANSSI validation

Mass market status

- article 3 of the Decree
- 5A002a1 and 5A002a6
- the three conditions of the **cryptography note** of the EU reg 428-2009



Annex I EC Reg 428/2009

Category 5 Telecom and "information Security", **PART**
2 *"information security"*

Note 3: Cryptography Note



EU reg 428/2009 Cat 5, part 2- Note 3 Cryptography Note

5A002 and 5D002 do not control goods that meet all of the following:

a. Generally available to the public by being sold, without restriction, from stock at retail selling points by means of any of the following:

Over-the-counter transactions;


Mail order transactions;

Electronic transactions; or

Telephone call transactions;

b. The cryptographic functionality cannot easily be changed by the user;

c. Designed for installation by the user without further substantial support by the supplier; **and**



d. When necessary, details of the goods are accessible and will be provided, upon request, to the **competent authorities** of the Member State in which the exporter is established in order to ascertain compliance with conditions described in paragraphs a. to c. above.



cont. **Declaration** with ANSSI *validation*

Mass market status

- Request on the declaration form
- Meet the requirements of Note 3
- Wait for the validation of ANSSI
 - Refusals happen

- Though not binding, it is useful to join the mass market status issued in other countries (US, UK, ...) for the same item



Request for prior **Authorization**

- Export or transfer to EU
- All other crypto means

- Example : 5A002a1 and 5a002a6 to be exported to others countries

- Authorization granted for 5 years, renewal



cont. **Request** for prior **Authorization**

- when delivered, then exporter must obtain export licence (Customs)
- Administrative and technical parts
 - See Order 2007
 - website



Administration in charge

– ANSSI

- « *Agence nationale de la Sécurité des Systèmes d'information* »
 - National Agency for information systems security
- ANSSI is part of the « *Secrétariat général de la défense et de la sécurité nationale* » - General Secretariat for Defence and National Security (SGDSN)
- The SGDSN is reporting to the Prime Minister and working in close liaison with the President of the Republic's office,
- the SGDSN assists the Head of Government in fulfilling his/her responsibilities in matters of national defence and security.



**Secrétaire général de la défense
et de la sécurité nationale**
Secrétaire général adjoint
de la défense et de la sécurité nationale

Secrétariat
pour le conseil de défense
et de sécurité nationale

Service
de l'administration
générale

**Direction des affaires
internationales, stratégiques
et technologiques**

- Affaires internationales
- Non-prolifération, sciences
et technologies
- Exportation
des matériels de guerre

**Direction de la protection
et de la sécurité de l'Etat**

- Prospective
et planification de sécurité
- Service de sécurité
de défense
- Recherche
et technologies de sécurité
- Sûreté aérienne

ANSSI



**Agence nationale
de la sécurité des
systèmes d'information**

- Stratégie et réglementation
- Assistance, conseil
et expertise
- Centre opérationnel de la SSI
- Systèmes d'information
sécurisés
- Centre de formation
à la SSI

Centre de transmissions
gouvernemental



cont. **Administration in charge**

- ANSSI Confidentiality obligation

Provision of article 15 of the Decree n°2007-663

The ANSSI staff is submitted to the requirement of protecting the confidentiality of the informations submitted within the above procedures.

The breach of such an obligation is sanctioned by the provision of the Criminal Code

*The disclosure of secret information by a person entrusted with such a secret,
either because of his position or profession, or because of a temporary function or mission, is punished
by one year's imprisonment and a fine of €15,000.
(article 226-13 of the criminal code)*



cont. **Administration in charge**

– To contact ANSSI

- Secrétariat général de la défense et de la sécurité nationale
ANSSI / SR / BCR
51, boulevard de La Tour-Maubourg
75700 PARIS 07 SP
- Telephone +33 (0) 1 71 75 82 75
Fax +33 (0) 1 71 75 82 60
- [controle.sr @ssi.gouv.fr](mailto:controle.sr@ssi.gouv.fr)
- <http://www.ssi.gouv.fr/en/regulation/cryptology/>



Waiting time

Background

- Since 2007, files +50%
- 2011: ~700 files
 - More items on the market ?
 - More awareness campaigns ?
 - More controls by Customs ?



cont. **Waiting time**

– Declaration

- File should be sent to ANSSI 1 month before operations
- 1 day to ~2 weeks: delivery of attestation
- Art.4 to 7 of the Decree 2007-663
 - 1 month to deliver attestation and request additional info, or request to change to authorization
 - but 12 months to ask for additional information from reception date



cont. **Waiting time**

– Authorization

- 1 month ½ (in 2010): delivery of attestation
- Art.9 to 11 of the Decree 2007-663
 - 4 months to deliver attestation
 - 2 months to request additional info, and the source code and two sets of the items (to be kept max 6 months)
 - No attestation delivered = authorization for 1 year



4. Penalties

- Administrative penalties
- Criminal penalties
- Customs penalties



Administrative penalties

- Article 34 of the 2004 law
 - When provider « forgot » to proceed with declaration or request for authorization
 - ANSSI:
 - Formal Notification to ask for explanations
 - Prohibition of selling In France
 - Removal of the items already on the shelves
 - Th prohibition can lifted when procedures ar cleared



***Cont.* Administrative penalties**

- Article 12 Decree 2007-663
 - Withdrawal of the authorization after formal notification to ask of explanations
 - False declaration or informations
 - Requirement of the authorization not met any longer, ...
- Withdrawal of the export licence (Customs)



Criminal penalties

For instance

- Article 35-I-1° of the 2004 Law
 - If no declaration done,
before selling, transfer, import, export,
 - 1 year imprisonment + fine of 15.000 €

- Article 35-I-2° of the 2004 Law
 - If no authorization delivered
when transferring or exporting
 - 2 years imprisonment + fine of 30.000 €
+ customs penalties



***Cont.* Criminal penalties**

- Additionnal criminal penalties created by the 2004 Law
 - Natural Person: Articles 131-19, 20, 21, 27, 33, 34,
 - Corporate bodies: Articles 122-2, 131-38, 39



Customs penalties

- **encryption items** (and dual use goods) are deemed to be goods for which export is allowed only when authorized
 - *prohibited goods (article 38 Customs code)*
- consequently, export of such **items without authorization** is sanctioned as a **customs offence** (*délit douanier de 1ère classe*), with the fines and penalties stated in article 414 of the Customs code
 - *Are liable of a maximum three-year prison sentence, of the seizure of the fraudulent object, of the seizure of the means of transport and of the seizure of the object which have been used to hide the cheating and of a fine of once or twice of the value of the fraudulent object, any smuggling and importing or exporting without declaration when the concern goods are "prohibited goods" or "highly taxed goods" with regards to the Customs and Excise Code.*



Cont. Customs penalties

- A corporate body not meeting its obligations from export controls regulations (including when transferring in the EU) is usually submitted to the following penalties:
 - administrative **penalty** (withdrawal of export licences),
 - And **customs** penalties (fine as stated in article 414 of the customs code)



5. Practical side

- **Provider:** it is advisable that you submit files to ANSSI ;
 - So, all retailers of this product can benefit from the clearance by ANSSI
- **Exporter:** ask info from provider and obtain the delivered authorizations which enable you to request export licence from Customs
- **Mass market :** in France, interpretation of the note 3 cryptography note = not designed for B2B



Cont. **Practical side**

- No national general licence on encryption to be foreseen yet
- 5A002a1: EU003 (repair/replc.) and EU004 (temp) in force
- Don't forget the global licence in France ; export items is more manageable



Questions ?



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