



Opinion of the Advocate General at the Court Tamara Čapeta in Case C-538/25 | [Flugzeugherstellerin] ¹

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Advocate General Čapeta: the concept of ‘dual-use items’ must be interpreted broadly so as to cover the vast array of strategic and security considerations of the Member States and the European Union

The ‘dual-use’ nature of a particular item must be assessed by reference to its physical and technical capabilities

In 2019, Flugzeugherstellerin, an Austrian company, exported a two-seat civilian aircraft designed for basic pilot training and related items and technology to the Myanmar Airforce. The competent Austrian authorities authorized that exportation. In 2023, Flugzeugherstellerin again sought to export the same items to the Myanmar Airforce. This time, the competent Austrian authorities did not authorize the exportation. They considered that said items constituted ‘dual-use items’, within the meaning of the Dual-Use Regulation, ² since those items could be used for reconnaissance flights and to train military pilots. The use of those items for such purposes means that they could be used in connection with human rights violations. Accordingly, the authorities prohibited their exportation. Flugzeugherstellerin introduced an action before the Federal Administrative Court, Austria, which seeks guidance from the Court of Justice on the criteria to determine when an item is of ‘dual-use’, within the meaning of the Dual-Use Regulation. That regulation allows Member States to prohibit the exportation of certain items provided they are considered of ‘dual-use’, which it defines as use for both civil and military purposes.

In her Opinion, **Advocate General Tamara Čapeta proposes that the concept of ‘dual-use items’ be interpreted broadly so as to allow the competent authorities of the Member States to adapt to the evolving strategic and security considerations of the world at large.** She acknowledges that such a broad interpretation might be in conflict with the principle of free trade. However, she explains that interpreting the concept of ‘dual-use items’ broadly does not mean that the Member States have unfettered discretion to introduce obstacles to free trade. Rather, as the Advocate General explains, the broad interpretation of that concept is counterbalanced by the limited scenarios in which the Member States are empowered to introduce restrictions on the exportation of ‘dual-use’ items. One such scenario is present where their exportation risks leading to human rights violations.

To determine whether an item is of ‘dual-use’, the Advocate General proposes that the competent national authorities rely on the item’s **physical and technical characteristics** at the time of exportation to decide on its **potential usage capabilities**. However, whether an item is of ‘dual-use’ does not require an assessment of the military capabilities of the end-user in the third country to which the item is to be exported, of the situation in that country, of the possibility for the end-user to repurpose said item or of the risk of that item being diverted for other purposes. Those concerns are not relevant for the assessment of whether the item is of ‘dual-use’, but may be taken into account when deciding on whether an authorization may be required for the exportation of said item.

Finally, the Advocate General highlights that the principle of **effective judicial protection** requires that the national authorities explain why, in the particular context before them, they consider the items in question to be of ‘dual-use’, and why, if they wish to prohibit their exportation, those items raise issues for security or for the protection of human rights.

NOTE: The Advocate General’s Opinion is not binding on the Court of Justice. It is the role of the Advocates General to

propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice of the European Union about the interpretation of EU law or the validity of an EU act.

The General Court has jurisdiction to deal with requests for a preliminary ruling coming exclusively within the following areas (1) the common system of value added tax (VAT), (2) excise duties, (3) the Customs Code, (4) the tariff classification of goods under the Combined Nomenclature, (5) compensation and assistance to passengers in the event of denied boarding or delay or cancellation of transport services, or (6) the system for greenhouse gas emission allowance trading. The Court of Justice has jurisdiction to deal with all other requests for a preliminary ruling.

Neither the Court of Justice nor the General Court decides the national dispute itself. It is for the national court or tribunal to resolve the case in accordance with the ruling by the Court of Justice or by the General Court, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice. The presentation of the facts and the legal context refers to the relevant period and is based on the case file.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ 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 [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 (the Dual-Use Regulation).