



Seminar on the Export Control of Dual-use Materials and Technologies in GUAM Countries Kiev, March 14-15, 2018

EU policy on export controls of dual-use items

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(with thanks to Adriaan van der Meer)

Rapidly Changing Security Environment



Security Challenges

Security Environment

- Increasing **WMD proliferation** challenges
- Globalisation and **transnational security** threats
- Increasing relevance of **non-state actors**

Technological and Scientific Environment

- Easier and faster **spread of technologies**
- **Cyber-security**
- Potential abuse of "open" **scientific research**

Economic Environment

- Rise of **global value-chains** in DU industries
- Blurred **civilian-military** duality
- Potential **distortions of competition**

MAIN EU ACTORS INVOLVED





EU GLOBAL STRATEGY and WMD

“The EU will strongly support the expanding membership, universalisation, full implementation and enforcement of multilateral disarmament, non-proliferation and arms control treaties and regimes. We will use every means at our disposal to assist in resolving proliferation crises, as we successfully did on the Iranian nuclear programme.”

EU NON-PROLIFERATION and Export control

EU framework dual use export control

EC Regulation 428/2009 and amendments

Joint Action on Technical Assistance

Union Customs Code under Reg. (EU) No 952/2013

Sanctions and Common EU guidelines

EU instruments for WMD strategy

EU Security and WMD strategies of 2003

New Lines of Action WMD

EU Long Term Programme on Export Control integrated in
the EU CBRN Risk Mitigation Centres of Excellence Initiative

CBRN CoE - Objective

- **Enhance all-hazard CBRN governance worldwide**
- **Promote interagency and regional coordination on CBRN-related security (Border Management, Critical Infrastructure, Cyber, Incident Response)**
- **Address partner countries priorities, to be identified through the bottom-up approach consisting of:**
 - **Regional Roundtables**
 - **Needs Assessment Questionnaires (NAQs)**
 - **National Action Plans (NAPs)**

CBRN Risk Mitigation Centres of Excellence



The EU trade control system

- **Institutional framework of the European Union**
- **Division of competencies between the EU and its Member States**
- **A trade measure serving security objectives**

Two treaties ruling trade control...

- **Treaty for Functioning of the EU and Euratom Treaty**



Governance

- ***Council and EP : co-legislators***
- ***European Commission : initiates legislation/
supports implementation***
- ***European Court of Justice: oversight***
- ***EU Member-States : Implementation***
- ***Industry, Academia, Scientific Institutions,
Civil Society ... : Stakeholders***

EU DUAL USE LEGISLATION: Council Regulation 428/2009 and amendments

- ❖ ***A common set of rules***
- ❖ ***WMD non-proliferation international commitments***
- ❖ ***Annex I: One single control list***
- ❖ ***Annex IV: most sensitive list (subset of Annex I)***
- ❖ ***Catch-all/ end-use controls***
- ❖ ***Dual-use items (including technology & software)***
- ❖ ***Operations (export, transit, brokering, intra-EU transfers)***
- ❖ ***Exceptionally additional national controls***
- ❖ ***Administrative cooperation & coordination (e.g. DUES, DUCG)***

The EU dual-use control List



**Telecommunication,
electronics, industrial
equipment**



The Australia Group

**Biological, chemical
processing**



**Chemical Weapons
Convention**

**Missiles, UAV,
fuels, navigation
systems,
structural
materials**



The structure of the EU list

4. Chemical Weapons Convention

3. The Australia Group

2. Nuclear Suppliers Group

**1. Missile Technology Control
Regime**

0. Wassenaar Arrangement

Balancing EC competency and national prerogatives:

| Mitigating provisions | |
|---|--|
| Immediate notification of the Commission after resort to art. 8 (art. 8.2) | <i>“MS shall notify the Commission of any measures adopted pursuant to public security or human right considerations”</i> |
| Exchange of information on exporters deprived of the right to use an EU GEA (art. 9.1) | <i>“MS shall exchange info on exporters deprived of the right to use an EU GEA”</i> |
| Communication to the Commission of any NGEA issued or modified art. 9.4 (b) | <i>“MS shall notify immediately of any NGEA issued or modified”</i> |
| Consultation procedures under article 11 when more than one MS are involved in an export (art. 11.1) | <i>“any objections of all MS engaged in an export shall bind the MS in which the application has been made” “In case a MS decides to grant an authorisation for which another MS was objected , this should be notified to the Commission and other MS”</i> |
| Consultation prior the granting of an authorisation of an essentially identical transaction denied by another MS art. 13.5 | Before MS grant an authorisation shall examine all valid denials or decisions to prohibit a transit taken by other MS for an essentially identical transaction. |
| Coordination & Transparency | Publication of national measures & lists of national auth. to the EU OJ, DUCG |

Types of authorisations

- ❑ **Individual:** One exporter, one or more types of items to one end-user
- ❑ **EU General Export Authorizations (EU GEAs):**
 - **1- exports to Australia, Canada, Japan, New Zealand, Norway, Switzerland (including Liechtenstein) and US**
 - **2 - export of certain dual-use items to certain destinations**
 - **3 - export after repair/replacement**
 - **4 - temporary export for exhibition or fair**
 - **5 - telecommunications**
 - **6 - chemicals**
- ❑ **Global Authorisations:** One exporter, multiple countries or end-users
- ❑ **National General Export Authorisations (NGEAs)**

COMMISSION PROPOSAL FOR THE MODERNISATION OF EU EXPORT CONTROLS

Adjusting to an evolving environment

Human Security

- Acknowledging the link between **security and human rights**
 - *Review definition of dual-use items (Art. 2.1)*
 - *Review control criteria – incl. human rights (Art. 14)*
 - *Introduce controls on cyber-surveillance technologies (Art. 3 - Annex I-B and Art. 4)*

Smart Security

- Building an **EU Technological Reaction Capacity**
 - *Technical Expert Groups (Art. 21.3), coordination of technical discussions in multilateral regimes*
 - *Guidance for exporters (Art. 24)*
 - *Capacity to amend annexes: delegation of competence with MS technical experts (Art. 16.6)*

Update of key control provisions

- Definition of export, exporter, determination of competent authority, jurisdiction clause, anti-circumvention clause...
- Controls on brokering, technical assistance and transit
- Control framework for intangible technology transfers, (ITT) and Dual-use research (DURC)

EU P2P Export Control Programme for Dual Use

DEVELOPMENT OF THE EU Export Control DU OUTREACH PROJECTS

| | | |
|--|---|---|
| <p><u>PP04</u> 3 countries 2005 Implemented by SIPRI</p> | <p><u>PP05</u> 5 countries 2006-2007 Implemented by BAFA</p> | <p><u>PP06</u> 8 countries 2007-2008 Implemented by BAFA</p> |
| <p><u>LTP1</u> 18 countries 2008- 2010 Implemented by BAFA</p> | <p><u>LTP2</u> 28 countries 2011-2013 Implemented by BAFA</p> | <p><u>LTP3</u> 23 countries 2013-2014 Implemented by BAFA</p> |
| <p><u>EUP2P-Global</u> 20 countries 2015-2017 Implemented by EF MS consortium</p> | <p><u>EUP2P-CoE46</u> 10 countries 2015-2017 Implemented by EF MS consortium</p> | <p><u>EUP2P-CoE38</u> 2countries 2015-2019 Implemented by BAFA</p> |





PARTNER COUNTRIES for 2017-2020 (Global Project)

Algeria

Morocco

Tunisia

Ukraine

Belarus

Armenia

Iran

Bosnia

Serbia

Albania

FYROM

Montenegro

Kosovo

Plus Specific Actions: in Jordan and Lebanon

PARTNER COUNTRIES for 2015-2017 (SEA Project-extended for one year)

| Active | On Hold |
|--------------------------|------------------|
| Brunei Darussalam | Indonesia |
| Lao PDR | |
| The Philippines | |
| Singapore | |
| Thailand | |
| Vietnam | |
| Cambodia | |
| Malaysia | |
| Myanmar | |

Implementing consortium



European
Commission

Expertise France
(AFETI)



Project Managers

Ministry of economy-
Export control
authority (SBDU)



Project Co-ordinator
– KE 1

Université de Liège
(ULG)



Legal Advisor – KE 2

Federal Office for
Economic Affairs and
Export Control (BAFA)



Licensing Advisor –
KE 3

Dutch customs



Enforcement
Advisor – KE 4

Other partners



Scientific Advisor



EU P2P method (in the past):

- Country profile**
- XC profiling on the basis of 3WH methodology**
- Initial Visit**
- Draft of WHY document and Roadmap**
- Training and other assistance according to Roadmap**

A glance in the next phase: (4WP)

- Unsupported: Awareness raising on STC**
- Nascent: Legal Review and Basic Trainings**
- Established: Support to the implementation & enforcement**
- Effective: Cooperation activities**



European
Commission

THE EU P2P DU Programme

Legal

Licensing

Customs

Awareness

Sanctions

5 Pillars

TYPE OF ACTIVITIES, e.g.,

- Training workshops
- National and regional seminars/workshops
- Remote assistance
- Study visits
- Advisory visits / meetings
- Awareness raising activities
- Train-the-trainer instruction
- Support for producing relevant documents

Key Players

Ministries / Policy:

- **(Inter)national policy decisions / Legislation**

Licensing Authority:

- **Licenses / Preventing sensitive exports / Technical knowledge**

Customs:

- **Border controls / Company audits**

Intelligence Agencies:

- **Information / Analysis**

Police / Investigation Agencies and Public Prosecutor:

- **Investigation and Prosecution**



'Target Initiative' under ISTC & STCU Projects: Export Control on Dual-Use Materials for Central Asia, Caucasus and Eastern Europe

Duration: (2 years)

- ISTC kicked off in September 2017, STCU kicked off in January 2018.

Overall objective:

- Engage the academic community in the CBRN area of knowledge, particularly in both intangible technology transfers and the education of professionals in the export control systems of the partner countries based on international obligations.



**Thank you for your
attention!**

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