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Motivations for effective export controls

GENERAL REMARKS ON EXPORT CONTROLS

- **A proper export control and licensing system is one of the main elements to avoid the proliferation of WMD**
 - ▶ Tool to meet international commitments in terms of non-proliferation of WMD, avoidance of destabilizing accumulations of conventional armaments and human rights
 - ▶ Control of the supply side, essentially focusing on the intended end-use/end-user
 - ▶ Licensing requirements and systems help to monitor trade
 - ▶ Prerequisite preventing “illicit” trade (licensed transactions are licit)



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GENERAL REMARKS ON EXPORT CONTROLS

- ▶ Forefront to international non-proliferation efforts
- ▶ Export controls shall not hamper legitimate trade
- ▶ Export controls are a preventive measure; they do not primarily aim at detecting illicit procurements, but rather at identifying WMD-sensitive transfers
- ▶ Export controls vs. "Strategic Trade Controls": Scope of controls nowadays includes related activities such as "brokering", "transits", "trans-shipments", "technical assistance"



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WHY EXPORT CONTROLS ARE NEEDED

- ▶ International and national security
- ▶ Commitments/obligations under international law (UN Security Council Resolutions)
- ▶ Regional commitments
- ▶ Economic benefits: Ability to trade with certain items and to import weapons and technology
- ▶ Reputation (pre-emptive or post-scandal)
- ▶ EU membership requirement
- ▶ Country's external relations



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INTERNATIONAL POLITICAL BACKGROUND

- ▶ **UN Security Council Resolution 1540/2004**
 - ▶ Aims to prevent both **access of non-state actors** to WMD and **proliferation** more broadly
 - ▶ Creates obligation for states to “**establish, develop, review and maintain** appropriate effective national **export and trans-shipment controls**” over nuclear, chemical and biological weapons and their means of delivery, and related items
 - ▶ Explicitly includes “appropriate **laws and regulations**”, “establishing **end-user controls**”; “establishing and enforcing appropriate criminal or civil **penalties** for violations of such export controls laws and regulations”; and “effective national **control lists**”

INTERNATIONAL POLITICAL BACKGROUND

- ▶ **European Security Strategy**
 - ▶ Identifies the proliferation of WMD as the **greatest threat** to European Security
 - ▶ Acknowledges beneficial aspect of export controls in slowing down spread of WMD
- ▶ **EU Strategy against the Proliferation of WMD**
 - ▶ “The EU is committed to strengthening export control policies and practices within its borders and beyond, in co-ordination with partners. The EU will work towards improving the existing export control mechanisms”



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KEY ELEMENTS of an EFFECTIVE EXPORT CONTROL SYSTEM

- ▶ **Comprehensive and clear primary legislation and implementing regulations, including**
 - Control List
 - Catch-all mechanism (end-use related controls) for non-listed items
 - Covering all actors in the supply chain

- ▶ **Licensing system including end-use controls**



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KEY ELEMENTS of an EFFECTIVE EXPORT CONTROL SYSTEM

- ▶ **Enforcement system** (involving customs, border police, police, intelligence, prosecutors...)
- ▶ **Effective administrative / criminal sanctions**
- ▶ **Outreach to industry and research community**
- ▶ **Policy-making mechanism**
- ▶ **Inter-agency cooperation on all levels**
- ▶ **International information exchange and cooperation**



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EU SANCTIONS / "RESTRICTIVE MEASURES"

- **Restrictive Measures are applied within the framework of the EU's Common Foreign and Security Policy**
- **Autonomous EU decisions or implementing Resolutions of the UN Security Council**
- **They may comprise arms embargoes, other specific or general trade restrictions (import and exports bans), financial restrictions, visa or travel bans, or other measures**
- **They target governments of third countries, or non-state entities and individuals (e.g. terrorists)**
- **More information (including overview of restrictive measures in place): http://eeas.europa.eu/cfsp/sanctions/index_en.htm**



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EXPORT CONTROLS FOR MILITARY EQUIPMENT

Mostly national matter but some common standards apply:

- Reference point for EU Member States' national military technology and equipment lists: Common Military List of the European Union
- Measures to control arms brokering
- Common criteria against which export licences are assessed:
 - International Obligations
 - Human Rights
 - Internal Situation
 - Regional Stability
 - National Security and security of Friends and Allies
 - Attitude to terrorism
 - Risk of diversion
 - Sustainable development



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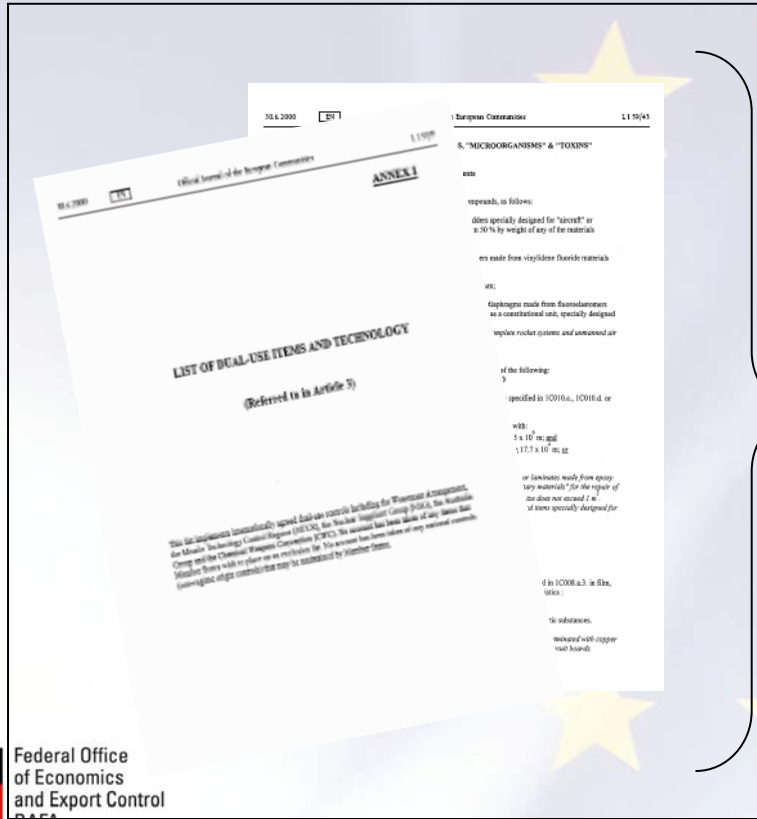
THE DUAL-USE REGULATION – One law for 27 EU Member States

**“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”**

Regulation

- ▶ **Defines what is meant by “dual-use items”, “exports” etc.**
- ▶ **Describes scope of the Regulation**
- ▶ **Sets up rules for the export (and related activities) of dual-use items**
- ▶ **Lays down rules for information exchange between Member States**

OVERVIEW: ANNEX I OF THE REGULATION



The image shows a screenshot of the 'Annex I' document from the EU Regulation on dual-use items. The document is titled 'LIST OF DUAL-USE ITEMS AND TECHNOLOGY' and is referred to in Article 3. It lists various items and technologies, including microorganisms and toxins, and specifies their characteristics and control requirements. The document is dated 20.4.2000 and is part of the Official Journal of the European Communities.

Annex I = "EU Control List"

- Common List of dual-use items that are subject to export controls
- Consolidated list: includes all international obligations and commitments (NSG, MTCR, AG, WA and CWC) and is updated on a regular basis



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CHALLENGES

- ▶ Globalisation / Trans-national companies – increased **complexity of trade flows**
- ▶ Increased complexity of proliferation attempts and **proliferation networks**
- ▶ **Technological developments**
- ▶ **Terrorism / Non-state actors**
- ▶ Security vs **Trade**
- ▶ Governments have only **limited possibilities**

ADVANTAGES for INDUSTRY

- ▶ Export controls open up **new markets** to foreign investment and technology transfers
- ▶ **Commercial interest** of companies to support subsidiaries in meeting their export control obligations: **company reputation**, expansion of markets and security of supply
- ▶ Shift of export controls from territorial to **end-use(r) focus**
- ▶ Companies can only **prosper** in a stable and peaceful environment.

Certain possibility to influence a legislation process

NO EXPORT CONTROL WITHOUT INDUSTRY

- ▶ need to create a culture of compliance
- ▶ export controls are a joint responsibility
- ▶ Industry knows the capabilities of its product or service
- ▶ Industry should know its customer, since it interacts directly with the parties - allows an early enduse / enduser check

NO EXPORT CONTROL WITHOUT INDUSTRY (2)

- ▶ **Exporters as the first line of defence are an important link in the chain of export control**
 - ▶ in many respects, industry is in a better position to identify, investigate and prevent exports of goods and technologies
- ▶ **Industry plays a vital role in ensuring potential exports, so firm`s compliance and their ICP get a growing role in the modern export-control**



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WHAT IS EXPECTED FROM INDUSTRY?

- ▶ Industry must understand why sensitive goods are controlled and how their acting assists non proliferation
- ▶ Industry must accept that they are not acting in a complete free market
- ▶ Companies need to know the their goods and the rules that apply to their goods
- ▶ Companies need to know their customers and need to be able to identify risks
- ▶ Need to keep relevant authorities informed about suspicious business contacts



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AWARENESS PROGRAMMES

- ▶ Goal is to **prevent** the company from doing business with unauthorized parties and to prevent critical exports
- ▶ Cooperation must go beyond simply informing
- ▶ Assist companies to comply, especially how to implement an effective **internal compliance programme** (ICP) to assist the exporter and particular the **export control manager** to fulfil the legal obligations.
- ▶ Help governments to effectively implement their control policies
- ▶ ... spread the message and give advice



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END

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Thank you for your attention