

DRAFT EU GUIDANCE ON BEST PRACTICES FOR "INTERNAL COMPLIANCE PROGRAMMES"

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Introduction

Effective controls on trade in dual-use goods, software and technology are vital for countering the risks of the proliferation of Weapons of Mass Destruction and the destabilizing accumulations of conventional weapons. Taking into consideration rapid scientific and technological advancements, the complexity of nowadays supply chains and the ever growing significance of non-State actors, effective state export controls depend on awareness within industry and its active efforts to comply with trade restrictions.

'Companies'¹ dealing with dual-use items are obliged to complying with strategic trade control requirements and related trade restrictions. They need to refrain from participating in transactions where there are concerns that items are to be used for proliferation purposes. To this end, companies usually put in place a set of internal policies or procedures, also known as an Internal Compliance Programme (ICP), to ensure compliance with EU² and national dual-use trade control laws and regulations. The scope and the extent of these procedures are usually determined by the size and the commercial activities of the specific company.

In order to support companies to maintain strict compliance with EU and national export laws and regulations, these guidance provide a framework to identify and manage dual-use trade controls impact and mitigate associated risks. The guidance focus on the 7 core elements for an effective ICP. Each core element is further detailed by a section 'What is expected from dual-use companies?' that describes the objective(s) of each core element, and a section "What are the steps involved?" that further specifies the actions and outlines possible solutions for developing or implementing compliance procedures. The guidance concludes with a set of helpful questions pertaining to a company's ICP and a list of diversion risk indicators and 'red flag' signs about suspicious enquiries or orders.

During the drafting phase, existing ICP (or ICP-like) approaches were assessed and possible avenues for refining or supplementing their scopes to better suit them to the EU dual-use context were considered. In particular the structure and detailing of the following 4 frameworks were assessed against the usefulness and objectives of EU ICP guidance for dual-use trade controls:

¹ For the purpose of this document the term 'companies' should be understood in a broad sense. It includes research, academic and other entities.

² 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.

- the 2011 Wassenaar Arrangement Best Practice Guidelines on Internal Compliance Programmes for Dual-Use Goods and Technologies,
- the ICP elements in the Commission Recommendation 2011/24/EU for intra-EU transfers of defense equipment,
- the results from the fourth Wiesbaden Conference (2015) on ‘Private Sector Engagement in Strategic Trade Controls: Recommendations for Effective Approaches on United Nations Security Council Resolution 1540 (2004) Implementation’
- the 2017 United States Export Control and Related Border Security Program ICP Guide website (<http://icpguidelines.com/>).

The draft guidance contains 7 core elements that should not be considered as an exhaustive list, nor should their order be perceived as ranking from very important to less important. They are identified as cornerstones for a company's tailor-made ICP and aim at assisting companies in their reflections on the most appropriate means and procedures for compliance with EU and national dual-use trade control laws and regulations. Dual-use companies are expected to have a range of existing policies and processes in place in relation to export control. For these dual-use companies, the core elements' structure could facilitate benchmarking their compliance approach. A company's approach to compliance that includes policies and internal procedures for, at least, all the core elements could be expected to be in line with the draft EU ICP guidance for dual-use trade controls. For companies that are in the process of developing a compliance approach for dual-use trade, the core elements' structure offers a basic and generic skeleton for company compliance.

At a general level, the most important aspect of developing an ICP is to keep it relevant to the company's organization and activities and to make sure that internal processes are easy to understand and follow, and capture the day-to-day operations and procedures. The individual requirements and characteristics of an ICP will depend on the size, structure and scope of the company's specific business activity, but also on the strategic nature of its items and possible end-uses or end-users, the geographic presence of its customers and the complexity of internal export processes. Therefore, it is important to stress that, during the development of this draft guidance, potential implementation challenges for Small and Medium Sized Enterprises (SMEs) were systematically considered.

Disclaimer

This guidance are of a non-binding character and should not to be considered as legal advice. This guidance are without prejudice to the decisions on authorisations, that are the responsibility of the competent authorities under Regulation (EC) No 428/2009. In case you wish to share feedback on the content of this brochure, please contact your competent authority (see Annex 3).

EU ICP guidance for dual-use trade control

The following core elements are essential for an effective dual-use trade control Internal Compliance Programme (ICP):

1. **Top-level management commitment to compliance**
2. **Organisation structure, responsibilities and resources**
3. **Training and awareness raising**
4. **Transaction screening process and procedures**
5. **Performance review, audits, reporting and corrective actions**
6. **Recordkeeping and documentation**
7. **Physical and information security**

The section ‘What is expected from dual-use companies³?’ describes the objective(s) of each core element. The section “What are the steps involved?” further specifies the actions and outlines possible solutions for developing or implementing compliance procedures.

With this in mind, the core elements should be understood as essential elements for companies involved in dual-use foreign trade. If your company is involved, then it should describe within its ICP how it implements the respective elements to be most applicable to its circumstances.

In doing so, all companies involved in dual-use foreign trade should consider the actions contained in the section “What are the steps involved”. However, in some cases, companies may deviate from actions if there are company-specific reasons for doing so.

³ For the purpose of this document the term ‘companies’ should be understood in a broad sense. It includes research, academic and other entities.

Risk assessment

An ICP needs to be tailored to the size, the structure and scope of the business, and especially, to the company's specific business activity. Therefore, if your company wants to develop or review its compliance programme for dual-use trade control, it is recommended to start with a risk assessment.

Such risk assessment allows your company to determine its dual-use trade risk profile. It will help your company to become aware of what parts of your business need to be incorporated into the ICP and target the ICP to the company's specific circumstances.

The risk assessment carefully assesses the product range, customer base and business activity that are or could be affected by dual-use trade control. It identifies relevant vulnerabilities and risks so that your company can incorporate ways to mitigate them into the ICP. Even though this risk assessment cannot identify all vulnerabilities and risks your company may face, it will give you a better base to develop or review your ICP.

The outcomes of this risk assessment will affect the necessary actions and appropriate solutions for developing or implementing your company's specific compliance procedures.

Your company may try to benefit as much as possible from the advantages of global, group-wide ICP solutions, but must always comply with all applicable EU and Member State laws and regulations relating to dual-use export control.

Authorised Economic Operator

If your company is holder of a valid Authorised Economic Operator (AEO) authorisation, the assessment of the compliance covering relevant customs activities could be positively taken into account for the purpose of developing or reviewing an ICP.

Taking into consideration that customs authorities have checked the customs routines and procedures of your company, the AEO status could be an asset for establishing or reviewing procedures relating to ICP core elements such as recordkeeping and physical security.

1. Top-level management commitment to compliance

Effective ICPs reflect a top-down process whereby the company's top-level management gives significance, legitimacy, and organisational, human and technical resources for the corporate compliance commitments and compliance culture.

What is expected from dual-use companies?

Top-level management commitment aims to build compliance leadership (lead by example) and corporate compliance culture for dual-use trade control.

This element is materialised by a written statement and support from top-level management to internal compliance procedures that promote the company's awareness of and compliance with the EU and Member State laws and regulations relating to dual-use trade controls.

The commitment indicates clear, strong and continuous engagement and support by top-level management. It results in sufficient organisational, human and technical resources for the company's commitment to compliance. The management communicates clearly and regularly to employees about the corporate commitment in order to promote a culture of compliance.

What are the steps involved?

Develop a corporate commitment statement stating that the company complies with all EU and Member State dual-use trade control laws and regulations.

Define the management's specific compliance expectations and convey the importance and value placed on effective compliance procedures⁴.

Clearly and regularly communicate the corporate commitment statement to all employees (also employees with no role in dual-use trade control) in order to promote a culture of compliance with the EU and Member State dual-use export control laws and regulations⁵.

⁴ The corporate commitment statement could for example state that under no circumstances exports, brokering, transit or transfer can be made contrary to EU and Member State dual-use trade control laws and regulations by any individual operating on behalf of the company. It could also stress the importance of employees being compliant with export controls, so that the employees understand possible non-compliance scenarios by communicating the risks of unauthorised transactions and possible consequences (reputational, financial, disciplinary etc.). It is recommended to keep the management commitment to compliance as simple as possible.

⁵ Companies could also consider to disseminate the statement in the public through corporate website and other commercial channels to inform third parties of the company's commitment to compliance.

2. Organisation structure, responsibilities and resources

Sufficient organisational, human and technical resources are essential for effectively developing and implementing compliance procedures. Without a clear organisation structure and well-defined responsibilities, an ICP risks suffering from lack of oversight and undefined roles. Having a strong structure helps organisations work out problems when they arise and prevent unauthorised transactions from occurring.

What is expected from dual-use companies?

The company has an internal organisational structure that is set down in writing (for instance in an organisational chart) and that allows for conducting internal compliance controls. It identifies and appoints the person(s) with the overall responsibility to ensure the corporate compliance commitments. Please be aware that in some Member States this must be a member of the top-level management.

All compliance related functions, duties and responsibilities are defined, assigned and connected to each other in an order that ensures the management that the company conducts overall compliance. Where necessary, duties (but not the overall responsibility) relating to export control may be delegated.

The company adequately staffs all areas of the business that are related to dual-use foreign trade with employees who demonstrably have the required skills. At least one person in the company is (not necessarily exclusively) entrusted with dual-use trade control.

Dual-use trade control staff is protected as much as possible from conflicts of interest. It is entitled to directly report to the person(s) with the overall responsibility for dual-use trade controls and should additionally have the power to stop transactions.

Dual-use trade control staff must have access to the relevant legislative texts including the latest lists of controlled goods and lists concerning embargoed or sanctioned destinations and entities. A compliance manual that describes the operational and organisational processes relevant for dual-use trade control is drawn up and distributed to the dual-use trade control staff. The company should consider the need for IT support for internal compliance procedures based on its business volume.

What are the steps involved?

Determine the number of dual-use trade control staff (legal and technical). Entrust at least one person in the company with the company's dual-use trade compliance and ensure that an equally qualified substitute can assume the task in case of absence (sickness, holidays etcetera). Depending on the average volume of orders, this person may only have to handle tasks relating to dual-use export control on a part-time basis.

Clearly identify, define and assign all compliance related functions, duties and responsibilities, possibly in an organisational chart. Clearly identify back-up functions whenever possible.

Make sure that the internal organisational structure for dual-use trade control is known throughout the organisation and that the internal records of these assignments are routinely updated and

distributed to employees. Make the contact details of the responsible person regarding dual-use trade control questions known within the company. If trade control duties are being outsourced, the interface to and the communication with the company needs to be organised.

Define the knowledge and skills needed by legal and technical dual-use trade control staff. Job descriptions are recommended.

Make sure that dual-use trade control staff is protected as much as possible from conflicts of interest. Depending on the size of the company, the responsibility for compliance may be laid down at a suitable department or division. For example: person(s) making the final decision whether goods can be shipped, are not part of the sales department, but part of the legal department. Allow this staff to function as expert advisors to guide company decisions resulting in compliant transactions.

Draw up a compliance manual to describe the operational and organisational processes that must be followed by the dual-use export control staff and other affected employees.

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3. Training and awareness raising

Training and awareness raising on dual-use trade control is essential for staff to duly perform their tasks and take compliance duties seriously.

What is expected from dual-use companies?

The company ensures via training that the dual-use trade control staff is aware of all relevant export control regulations as well as the company's ICP and all amendments to them. Examples of training material are external seminars, subscription to information sessions offered by competent authorities, in-house training events, etc.

Furthermore, the company carries out awareness raising for the employees at all relevant levels.

What are the steps involved?

Provide compulsory, periodic training for all dual-use trade control staff to ensure they possess the knowledge to be compliant with the regulations and the company's ICP.

Ensure via training that all concerned employees are aware of all relevant dual-use trade control laws, regulations, policies, control lists and all amendments to them as soon as they are made public by the competent authorities. If possible, consider customised trainings.

Develop general awareness raising for all employees and dedicated training activities for e.g. purchasing, engineering, project management, shipping, customer care and invoicing.

Consider, whenever appropriate, to make use of national or EU training initiatives for dual-use trade control.

Incorporate lessons learnt from performance reviews, audits, reporting and corrective actions, whenever possible, in your training or export awareness programs.

4. Transaction screening process and procedures

In terms of operational implementation, transaction screening is the most critical element of an ICP. This element contains the company's internal measures to ensure that no transaction is made without the required license or against any relevant trade restriction or prohibition.

The transaction screening procedures collect and analyse relevant information concerning item classification, transaction risk assessment, license determination and application, and post-licensing.

Transaction screening measures also allow the company to develop and maintain a certain standard of care for handling suspicious enquiries or orders.

What is expected from dual-use companies?

The company establishes a process to evaluate and determine whether or not a transaction involving dual-use goods, software or technology is subject to national or EU dual-use trade controls. In case of recurring transactions, the process takes into account that transaction screening needs to be performed periodically.

This core element is divided into:

- Item classification, including software and technology;
- Transaction risk assessment
 - Checks on trade-related embargoed, sanctioned or sensitive destinations and entities⁶;
 - Stated end-use and involved parties screening;
 - Diversion risk screening;
 - Catch-all controls for non-listed dual-use items;
- License determination and application, including for brokering, transfer and transit activities; and
- Post-licencing, including shipment control and compliance with the conditions of the authorisation.

⁶ Sensitive destinations and entities are not embargoed or sanctioned, but the shipment of (certain) dual-use items thereto can be critical in individual cases, for example because of proliferation or human rights concerns. Member State governments can implement their own approach on this matter. Whenever in doubt, be sure to contact your competent authority.

In case of doubt or suspicion during the transactions screening process, in particular about the results of the stated end-use and involved parties or diversion risk screening, consult with the competent authority in the EU Member State where your company is established.

Transaction screening can be done manually or with the support of automated tools, depending on your company's needs and available resources.

What are the steps involved?

Item classification

Item classification is about determining whether the items are listed. This is done by comparing the technical characteristics of an item against the EU and national dual-use control lists. If applicable, identify whether the item is subject to restrictive measures (including sanctions) imposed by the EU or the EU Member State in which your company is established.

Understand that dual-use items, whether a physical product, software or technology, could require a license for various reasons. Pay particular attention to the classification of dual-use components and spare parts, and to the classification of dual-use software and technology that can be transferred by e-mail or made available via, for instance, a 'cloud' service abroad.

Gather information about the possible misuse of your dual-use items in the context of conventional military or weapons of mass destruction. Share this information within the company.

It is recommended to request information from your supplier(s) about the dual-use classification of materials, components, subsystems that are processed or integrated by your company, including machinery used in the production. It is still your company's responsibility to check the classification received from the supplier(s).

As required by Article 22(10) of the EU dual-use regulation, mention - with a reference to the relevant legislation⁷ - in the commercial documents that the transaction involves listed dual-use items and are subject to controls if exported from the EU.

Transaction risk assessment

Checks on embargoed, sanctioned or sensitive destinations and entities

Ensure that none of the involved parties (intermediaries, purchaser, consignee or end-user) are subject to restrictive measures (including sanctions) by consulting the consolidated list of sanctions⁸.

⁷ 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.

⁸ https://eeas.europa.eu/topics/sanctions-policy/8442/consolidated-list-of-sanctions_en

Stated end-use and involved parties screening;

Know your customers and their end-use of your products.

Ask for an end-use statement if the transaction involves listed dual-use items and when there are end-use(r) concerns in case of non-listed dual-use items. Consult the information provided by your competent authority for national rules and requirements concerning end-use statements⁹¹⁰.

Assess if the stated end-use meets the activities and/or markets of the end-user. Be vigilant for diversion risk indicators and signs about suspicious enquiries or orders. Annex 2 contains a list of questions to support your stated end-use and involved parties screening risk screening.

Diversion risk screening

Be vigilant for diversion risk indicators and signs about suspicious enquiries or orders. Annex 2 contains a list of questions to support your diversion risk screening.

Pay particular attention to the catch-all controls for non-listed dual-use items, if the stated end-use and involved parties screening or the diversion risk screening provide information of concern in the sense of the catch-all provisions in Article 4 of Council Regulation (EC) no 428/2009.

Catch-all controls for non-listed dual-use items

Ensure that the company has procedures in place to determine if it is “aware” that there is information of concern about the stated end-use (in the sense of the catch-all provisions). If the exporter is “aware” in the sense of the catch-all provisions the company ensures that no export occurs without notifying the competent authority and without having received the competent authority’s final decision.

⁹ Article 9(2) of Council Regulation (EC) no 428/2009 states that granting an authorisation may be subject to an obligation to provide an end-use statement. Therefore, inform yourself whether the competent export control authority requires (1) a correctly filled-out and signed end-use statement for one or more authorisations; and (2) whether the end-use statement shall contain the letterhead of the end-user/consignee in the country of final destination. Even without a national obligation to submit a correctly filled-out and signed end-use statement, an end-use statement is a useful means to check the reliability of the end-user/consignee and the information can be used to determine if an authorisation is required for non-listed dual-use items where there are stated end-use concerns in the sense of the catch-all provisions in Article 4 of Council Regulation (EC) no 428/2009.

¹⁰ In case your customer is unfamiliar with the request for an end-use statement, consider drafting a (one-page) accompanying letter explaining the very basics of dual-use trade control and indicating that the requested document speeds up applying for a licence or might even be necessary for receiving a license.

For cases in which the exporter is being “informed” by the competent authorities that there is information of concern about the stated end-use (in the sense of the catch-all provisions), then the company needs to have procedures in place to ensure the swift flow of information and the immediate stop of the export. It must be ensured that the export does not occur without having received an authorisation by the competent authority.

License determination and application, including for brokering, transfer and transit activities

Ensure that your company has the contact details of the competent export control authority.

Gather and disseminate information about the range of license types (including individual, global and general licenses) and controlled activities (including export, brokering, transfer and transit), and about the license application procedures relating to the applicable EU and national dual-use trade controls.

Be aware about additional dual-use trade control measures for other activities, such as technical assistance.

Post-licencing, including shipment control and compliance with the conditions of the authorisation

Before the actual shipment, there should be a final check if all steps regarding compliance were taken. This is a good moment to double check if items are correctly classified, if red flags have been checked, if the screening of entities was done and whether there is a valid licence for the shipment. A final transaction risk assessment is necessary in case a change of relevant legislation took place in the meantime. For example: the commodity is now a listed dual-use item or the end-user is now sanctioned.

Implement a procedure in which goods can be stopped or put on hold when any of the requirements are not met, or when any red flags are raised. The goods should only be released by a person with responsibility for compliance.

Ensure that the terms and conditions of the licence have been complied with (including reporting).

Be aware that any changes to the exporting company’s details (such as name, address and legal status), to the details of the end-user and/or intermediaries and to the details of the authorised items may affect the validity of your license.

5. Performance review, audits, reporting and corrective actions

An ICP is not a static set of measures and therefore must be reviewed, tested and revised if proven necessary for safeguarding compliance.

Performance reviews and audits verify whether the ICP is implemented to operational satisfaction and is consistent with the applicable national and EU export control requirements.

A well-functioning ICP has clear reporting procedures about the notification and escalation actions of employees when a suspected or known incident of non-compliance has occurred. As part of a sound compliance culture, employees must feel confident and reassured when they raise questions or report concerns about compliance in good faith.

Performance reviews, audits and reporting procedures are designed to detect inconsistencies to clarify and revise routines if they (risk to) result in non-compliance.

What is expected from dual-use companies?

The company develops performance review procedures to verify the day-to-day compliance work within the company and to check whether the export control operations are implemented appropriately according to the ICP. It is executed internally, it enables for early detection of non-compliance and follow-up measures for damage control and it reduces related risks for the company.

The company has procedures in place for audits, being systematic, targeted and documented inspections to confirm that the ICP is correctly implemented. Audits can be performed internally or by an independent auditor. If resources allow, it is a good business practice to periodically deploy an outside auditor. External audits can provide an unbiased, third-party evaluation, and validation, of an organisation's overall export compliance program and practices.

Reporting is the set of procedures for dual-use trade control staff and other relevant employees regarding the notification and escalation measures to take in the event of suspected or known incidents of dual-use trade non-compliance.

Corrective actions are the set of remedial actions to guarantee the proper implementation of the ICP and the elimination of identified vulnerabilities in the compliance procedures.

What are the steps involved?

Provide for (random) control mechanisms as part of daily operations to monitor the trade control workflow within the company to ensure that any wrong doings are detected in an early stage. For example, one approach is to use the four eyes principle for a technical classification or transaction screening result.

Develop and perform audits to check the design, adequacy and efficiency of the ICP.

Make sure to include all aspects of the internal compliance programme into the audit.

Ensure that employees feel confident and reassured when they raise questions or report concerns about compliance in good faith.

Establish whistleblowing and escalation procedures to govern the actions of employees when a suspected or known incident of dual-use trade non-compliance has occurred.

Document any suspected breaches of national and EU dual-use control legislation and the associated corrective measures in writing.

Take effective corrective actions to adapt the export control operations or the ICP according to the findings of the performance review, the ICP system audit or the reporting. It is recommended to share these findings, including the revision to procedures and corrective actions with dual-use trade control staff and management. Once the corrective actions have been implemented, it is recommended to communicate the amended procedures to all employees.

A dialogue with your competent authority can contribute to damage control and possible ways to strengthen the company's export control.

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6. Recordkeeping and documentation

Proportionate, accurate and traceable recordkeeping of dual-use trade control related activities is essential for your company's compliance efforts. A comprehensive recordkeeping system will help your company with conducting performance reviews and audits, complying with national documentation retention requirements and it will facilitate cooperation with competent authorities in case of a dual-use trade control enquiry.

What is expected from dual-use companies?

Recordkeeping is the set of procedures and guidelines for legal document storage, record management and traceability of dual-use trade control related activities. Some documents are required to be maintained by law, others are not. But some documents (e.g. an internal document describing the technical decision to classify an item) may be in your company's best interest to maintain. If all required records are captured and correctly filed, this allows for more efficient search and retrieval during the day-to-day dual-use trade control activities but also during the periodic audits.

What are the steps involved?

Verify the legal requirements for recordkeeping (period of safekeeping, scope of documents, etc.) in the national legislation of the EU Member State where the company is established.

In order to make sure that all relevant documentation is at hand, consider determining the record retention requirements in contracts with intermediaries, including freight forwarders and distributors.

Create an adequate filing and retrieval system for the dual-use trade control. Both for paper and electronic systems, performant indexing and search functionalities are essential.

Ensure that export control related documents are maintained in a consistent manner and can be made available promptly to your government or other external parties for inspections or audits.

It is recommended to keep a record of past contacts with the competent authority, also in relation with end-use(r) controls for non-listed dual-use items and in case of technical classification advices.

7. Physical and information security

Trade controls of sensitive items, including software and technology, occur for reasons of (inter)national security and foreign policy objectives. Therefore having appropriate security measures contributes to containing the risks concerning unauthorised removal of controlled dual-use items. Because of its very nature, ensuring compliance with dual-use trade regulations for controlled software or technology in electronic form can be particularly challenging.

What is expected from dual-use companies?

Physical and information security refer to the set of internal procedures that are designed to ensure the prevention of unauthorised removal of dual-use items by employees, contractors, suppliers or visitors. These procedures cultivate a security culture within the company ensuring that dual-use items including software and technology do not get lost, are easily stolen or exported without a valid license.

What are the steps involved?

Physical security

Ensure according to the company's risk assessment that controlled dual use items are secured against unauthorised removal by employees or third parties. Measures that could be considered include for example physically safeguarding the items, the establishment of restricted access areas and personnel access or exit controls.

Information security

Establish basic safeguarding measures procedures for secured storage of and access to controlled dual-use software or technology in electronic form, including antivirus checks, file encryption, audit trails and logs, user access control and firewall. If applicable to your company, consider protective measures for uploading software or technology to the "cloud", storing it in the "cloud" or transmitting it via the "cloud".

Annex 1 – Frequent questions pertaining to a company’s ICP

Companies or authorities may use the following non-exhaustive list of frequent questions pertaining to a company’s ICP. The questions relate to all core element, but not necessarily to every step described.

These frequent questions can either be useful when developing an ICP, or at a later stage to review an existing ICP.

These frequent questions do not serve as a substitute for assessing your company’s ICP against the details of the sections ‘What is expected from dual-use companies?’ and “What are the steps involved?” in the main part of these guidance. The answers to these frequent questions should also not be understood as a reassurance of a proper ICP for dual-use trade control.

1. Top-level management commitment to compliance

- ☞ Is a top-level management commitment clearly stating the company’s commitment to dual-use trade controls available?
- ☞ Is the statement easily accessible for all employees?

2. Organisational structure, responsibilities and resources

- ☞ Did your company nominate the person(s) in charge of answering employees' questions on the company’s compliance procedures, on a suspicious enquiry or on possible violations? Are the contact details of the responsible person(s) available to all affected staff?
- ☞ What are the parts or activities of your company that are concerned by dual-use trade control and compliance?
- ☞ In which part of your company is the dual-use trade compliance personnel situated? Could there be a conflict of interests?
- ☞ In case your company decides to outsource the dual-use trade compliance management, how is the interaction with your company organised?
- ☞ How many people are either employed solely to deal with dual-use trade control or have responsibility for it with other tasks? Are back-up persons available?
- ☞ How is the relationship between the export control staff and the top-level management organised, for example, concerning information exchange?
- ☞ Is a compliance manual that describes the operational and organisational compliance procedures available to dual-use trade control staff?
- ☞ Are there electronic tools available that assist your company’s compliance procedures?

3. Training and awareness raising

- ☞ Does your company provide for (tailored) compliance training or awareness raising activities?

- ☞ What compliance training or awareness raising formats does the company offer? Examples are external seminars, subscription to information sessions offered by competent authorities, in-house training events, etc.

4. Transaction screening process and procedures

4.1. Item classification

- ☞ Are all products assessed against the EU and national dual-use control lists or restrictive measures, and who is responsible for this?
- ☞ Is your company involved in the electronic transmission of dual-use software or technology? If so, how does the company ensure compliance with the electronic transmission of software technology?
- ☞ Are there procedures in place for employees accessing controlled technology or software when visiting abroad?
- ☞ Is the classification of products received or manufactured by the company recorded?
- ☞ Are changes in the national and EU dual-use control lists translated into the company's classification procedures?
- ☞ When considering Article 22(10) of the EU dual-use regulation, do the commercial documents relating to the export of dual-use items listed mention that those items are subject to controls if exported from the EU?

4.2. Transaction risk assessment

See Annex 2 for a non-exhaustive list of 'red flag' questions that can support your company's transaction screening process to detect suspicious enquiries from customers.

Checks on embargoed, sanctioned or sensitive destinations and entities

- ☞ During the transaction risk assessment, how does your company take into account restrictive measures (including sanctions)?

Stated end-use and involved parties screening

- ☞ What are the internal procedures for the stated end-use and involved parties screening process?
- ☞ How are (new) involved parties screened? Do you periodically screen existing customers again?

'Catch-all' controls for non-listed dual-use items

☞ How is information of concern about the stated end-use (in the sense of the catch-all provisions¹¹) collected and put to use?

Diversion risk screening

☞ Has your company procedures in place for risk diversion screening.

4.3. License determination and application, including for controlled brokering, transfer and transit activities

☞ What are the internal procedures for the stated end-use and involved parties screening process?

4.4. Post-licencing, including shipment control and compliance with the conditions of the authorisation

☞ Does a final transaction risk assessment place before the shipment?

☞ How does your company ensure that the terms and conditions (including reporting) of the licence(s) are being complied with?

☞ What are the procedures for dealing with positive and negative results from the transaction risk assessment?

☞ How are false positive results (an unnecessary hit of concern) from the transaction risk assessment resolved?

5. Performance reviews, audits, internal reporting and corrective actions

☞ Are the daily relevant business operating procedures subject to a (random) dual-use trade control performance review?

☞ Does your company have internal or external audit procedures in place?

☞ Does your company have whistleblowing or escalation procedures in place?

☞ What corrective actions does your company undertake in case of non-compliance?

6. Recordkeeping and documentation

¹¹ Article 4 of Council Regulation (EC) no 428/2009.

- ☞ What are the company's procedures for filing and retrieving documents related to dual-use trade control? Did your company consider including a record of past contacts with the competent authority?
- ☞ Are the legal requirements for recordkeeping known to the dual-use trade control staff and relevant commercial partners?
- ☞ Are records being inspected for completeness, accuracy and quality?

7. Physical and information security

- ☞ Did your company consider safeguarding cybersecurity measures for dual-use software and technology to ensure that they do not get lost, are easily stolen or exported without a valid license?
- ☞ Can your company identify critical steps and related physical and information security vulnerabilities regarding dual-use items?

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Annex 2- "Red flags" relating to suspicious enquiries

Being vigilant for signs of suspicious enquiries or orders is vital for countering the risks of the proliferation of Weapons of Mass Destruction, their means of delivery, and the destabilising accumulations of conventional weapons. Sharing such information with your competent authority is highly recommended and may in some cases be mandatory under EU and national laws and regulations. In case of doubt, consult with the competent authority.

The below non-exhaustive list of questions is based on existing best practice and is derived from:

- ☞ the Wassenaar Arrangement list of advisory questions for industry (Agreed at the 2003 Plenary)
- ☞ the 2010 Compliance Code of Practice (Department for Business Innovation & Skills, United Kingdom) and
- ☞ ICP approaches from competent authorities in other EU Members States.

Your company should be suspicious if the following "red flags" are detected:

End use and End user

- ☞ the customer is new to your company and your knowledge about him/her is incomplete or inconsistent or it is difficult to find information about the customer;
- ☞ the stated end user is a trading company, distributor or based in a free trade zone;
- ☞ the end user is tied to the military, the defence industry or a governmental research body and the stated end use is civilian;
- ☞ the customer seems not to be familiar with the product and its performance characteristics (e.g. an obvious lack of technical knowledge);
- ☞ the contact information in enquiries (e.g. phone numbers, e-mail, addresses) is located in other countries than the stated company, or changed to that over time;
- ☞ the company has a foreign company name (e.g. in a language that is unexpected for the country where headquarter is located);
- ☞ the company website lack content in comparison to what is normally found on a legitimate company website;
- ☞ the customer is reluctant to offer information about the end use of the items, provide clear answers to commercial or technical questions which are routine in normal negotiations or to provide an end user statement;
- ☞ an unconvincing explanation is given as to why the items are required, given the customer's normal business, or the technical sophistication of the items;

Shipment

- ☞ unusual shipping, packaging or labelling arrangements are requested; usual incoterms for shipment, the sealing of containers/trucks and the confirmation of receipt by the consignee/end-user are refused;

Finance and contract conditions

- ☞ unusually favourable payment terms such as paying an unreasonable high price, full payment in advance or want to do a full cash payment immediately;
- ☞ the payment is made by other parties than the customer or stated intermediaries and follow another route than the products;
- ☞ routine installation, training or maintenance services are declined;
- ☞ the installation site is in an area under strict security control or is in an area to which access is severely restricted, or is unusual in view of the type of equipment being installed;
- ☞ there are unusual requirements for excessive confidentiality about final destinations, or customers, or specifications of items;
- ☞ there are requests for excessive spare parts or lack of interest in any spare parts;

Sharing information and suspicious enquiries with your competent authority is highly recommended and good business practice. In case of doubt, consult with the competent authority. Trust your instincts, you know best what is suspicious within your business area.



Annex 3 - List of EU MS competent export control authorities

http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154880.pdf