



INTERNAL COMPLIANCE **PROGRAM**

A practical guide on the added value and implementation of an ICP for export provided by the Strategic Goods Control Unit of the Government of Flanders



Flanders
State of the Art

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INTRODUCTION

Export control is a general term carrying many different meanings, from entering into foreign markets to physical verifications of shipments by Customs. In this process both the business community and the competent authorities have a shared responsibility to comply with the applicable regulations. As for the export of strategic goods¹, special attention is also required for the international fight against nuclear proliferation² and the development and use of weapons of mass destruction.

With this guide the Strategic Goods Control Unit wants to offer Flanders-based exporters a guideline for meeting this responsibility and for installing, optimising and/or further developing an in-house export control system. This guide has been drawn up as a concise handbook written from a pragmatic point of view. It is primarily intended for exporters of dual-use items³, but may also serve as a useful tool for exporters of goods with potential strategic value⁴.

In recent years, the Strategic Goods Control Unit has been focusing on outreach to the business community. Over the past years, raising awareness of and providing information on export compliance systems have played an increasingly important role in this context. The idea for putting together this guide arose from recommendations from international control regimes, which Belgium is a member of, and from the feedback of Flemish exporters. Its purpose is to offer a number of workable tools and ideas in the field of export control which will encourage you as exporter to implement an international compliance programme (ICP) that is customised to your company's needs.

1 The heading 'strategic goods' is to be understood as weapons and military equipment as listed in the Common Military List of the European Union, and dual-use items as listed in Annex I of Council Regulation (EC) No 428/2009.

2 The term 'nuclear proliferation' refers to the spread of nuclear weapons, fissionable material and weapons-applicable nuclear technology and information to nations not recognised as 'nuclear-weapon States' by the Treaty on the Non-Proliferation of Nuclear Weapons (i.e. the Nuclear Non-Proliferation Treaty).

3 'Dual-use items' means items, including software and technology, which can be used for both civil and military purposes. This also includes products which may be used for the production of biological, chemical and/or nuclear weapons or explosive devices.

4 Goods with potential strategic value are for instance goods whose technical qualifications are closely in line with the dual-use items mentioned in the legislation.

1. WHAT IS AN ICP ?

“ICP” stands for “Internal Compliance Programme”, i.e. an internal (export) control system. It is a collective term for internal company measures that are taken to ensure that exports take place in conformity with current export regulations. A well-developed ICP has a positive effect on various departments within a company, such as the departments dealing with IT, Sales, Legal Advice, Marketing, etc.

An ICP is a **facilitating instrument** of your company’s export policy. Although an ICP is not a legally binding instrument in itself, it does contain the necessary checks and inspections to make sure the intended end use of the goods to be exported is guaranteed and legitimate and to ensure compliance with the applicable export regulations. In other words, it is an important working tool to have your company meet the requirements of export control legislation.

For exporters of dual-use items, an ICP has an additional function, namely to **detect and assess potential proliferation risks** which may arise from the export of these items. Moreover, it is an absolute **prerequisite for** obtaining a **global export authorisation** for dual-use items, since it is the exporter that carries out checks of the end use and end user in case of a global authorisation. The Strategic Goods Control Unit only conducts ex post inspections at the time of the mandatory annual reporting of exports within the framework of a global authorisation. The idea is thus for the ICP to include the necessary checks of the intended end use and end user at the earliest possible stage of the sales process so as to allow potential risks to be detected in time and appropriate action to be taken.

The development of an ICP always involves **customisation** and reflects the exporter’s needs and resources. That is why it is above all important to identify the company’s profile on the basis of its business activity (producer, system integrator, broker, distributor, etc.), ownership structure (SME, multinational, mother/subsidiary companies, etc.), location, size of the workforce and export turnover, the nature and business activity of its customers, business structure/internal organisation, etc. The outcome is a company-specific ‘profile’ which will give an indication of the company’s needs in terms of an ICP and of how many human and financial resources can be freed up for this purpose. This profile will also be used to determine which elements the ICP should contain and how extensive it should be.

An SME will probably require fewer financial and human resources for the management of its export control system than a multinational. For instance, a company which realises dozens of exports to various end users each day will need a totally different and more complex IT monitoring system as part of the ICP than an exporter that sends a shipment of strategic goods on a weekly or monthly basis only.

Although a “one fits all” ICP does not exist, there are a number of basic parameters which each ICP must address. Chapter 3 of this guide lists these characteristics and describes how they can be entered in the ICP.

2. REASONS FOR IMPLEMENTING AN ICP

The idea that an ICP is an essential tool for export control has been embedded over the years in policy instructions, brochures, and legislation. **International control regimes**¹, like the Wassenaar Arrangement and the Nuclear Suppliers Group, which constitute the basis of the Council Regulation on dual-use items, provide specific guidelines. The EU has encouraged the use of ICPs by exporters in the aforementioned Regulation and frequently organises info sessions and seminars about this topic.

The following legislation and policy documents, amongst others, encourage exporters to use an internal control system:

- Council Regulation (EC) No 428/2009, Article 12
- Best Practice Guidelines on Internal Compliance Programmes for Dual-Use Goods and Technologies, Wassenaar Arrangement 2011
- Principles and Examples of Good Practices, Nuclear Suppliers Group
- Strengthening Strategic Export Controls by Internal Compliance Programs. Second Revision (<http://publications.jrc.ec.europa.eu/repository/bitstream/JRC92964/sevini%20-%20online.pdf>)

The question is how exactly an exporter may benefit from an ICP. Implementing a good ICP requires human and financial resources, which is why it must yield concrete results.

At **macro-level**, 3 important advantages are identified:

- ▶ **Contributing to the safeguarding of international and geopolitical security:**
Knowledge about the end use and end user of strategic goods will minimise the risk of end use for proliferation purposes. The idea is to detect and prevent suspicious transactions from an early stage onwards and to use the gathered information to help competent authorities in identifying delivery routes for unauthorised end use of strategic goods. When an exporter detects a proliferation risk in a specific order, it must always inform the competent public authority of this to allow further thorough investigations to be carried out and to make communication to partner countries possible. In this way the consignee is prevented from trying to use other delivery routes.

¹ “International control regimes” is understood to mean the 5 multilateral cooperation institutions for specific export control matters, which Belgium is a member of: 1. the Wassenaar Arrangement (WA) on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, 2. the Nuclear Suppliers Group (NSG) regarding nuclear goods and technology, 3. the Australia Group (AG) regarding chemical and biological products and technology, 4. the Missile Technology Control Regime (MTCR) regarding missile technology and 5. the Chemical Weapons Convention (CWC) regarding chemical products.

Complying with international commitments and trade restrictions:

Flanders, together with the federal level in Belgium, commit themselves within several European and international forums to fulfilling a number of obligations regarding export regulations for strategic goods. It is a shared responsibility between competent authorities and exporters of strategic goods to comply with the relevant regional, national, European and international legislations.

Contributing to the fight against the proliferation of weapons of mass destruction:

Certain strategic goods, and more specifically dual-use items, can be directly used for the development or production of nuclear, chemical and biological weapons of mass destruction or for missile technology for carriers of these weapons. Sound in-company export control can minimise the risk of these strategic goods falling into enemy hands.

At **micro-level**, several direct advantages can be identified:

Mapping an efficient export flow:

Mapping the export flow is necessary to be able to integrate control mechanisms into the business process. This exercise offers the opportunity to examine which efficiency gains can be achieved in this respect.

Obtaining knowledge and control of the end user's nature and activities:

This knowledge delivers certainty about the intended end use of the products concerned and gives exporters a better insight into their customers' profiles and purchasing needs.

Complying with export control legislation:

Every exporter is deemed to comply with the law. A sound ICP helps guarantee this compliance and prevents unintentional infringements.

For example: As part of the ICP, specific mention is made of the reference to the product category in Annex I of Council Regulation (EC) No 428/2009 for each export product in a company in an internal (electronic) system. In this way it is immediately known for which product an export authorisation is to be applied for.

Minimising the risk of involvement in unauthorised exports and/or proliferation practices:

Since the legislation concerned is often complicated, the inclusion of the practical elements in the export flow will make sure its macro-economic purposes are respected as well.

For example: A list of sensitive industrial sectors can be integrated into the ICP (like companies developing satellite technology or companies entered in EU sanctions regimes against specific countries). When a customer features on this list, enhanced vigilance should be exercised and the competent authority may be informed.

Avoiding to be entered on a list of targeted entities by some bodies and authorities:

Because the export legislation is strictly complied with and monitored, suspicious transactions are rapidly detected. The participation (whether intentional or not) in suspicious transactions may cause your company to run the risk of being included by some authorities or bodies on a list of entities with an enhanced risk of suspicious transactions.

For example: A financing institution enters your company on an internal list, as a result of which future payments and/or revenues will always be blocked and/or investigated. This will cause you to lose valuable time in the ordering/delivery process.

Raising the awareness of members of staff:

By implementing an ICP, staff members will be increasingly aware of relevant issues, which will make them more alert to suspicious orders.

For example: The ICP will indicate that an export authorisation is required for the export of dual-use items. As a result, the sales manager knows that a verification is to be carried out of the end use and end user. He or she will pay closer attention to ensuring that communication runs smoothly, that the customer uses a company-specific e-mail address and clearly communicates about what it needs in terms of end use, etc.

Corporate reputation:

Compliance with the export legislation and the use of an ICP will minimise the risk of unauthorised transactions and be a testimony of your company's reliability to your customers, suppliers, and to the competent authorities. For example: Because an exporter has an effective and efficient ICP, it will be systematically indicated when additional specific documents are required to apply for and obtain an export authorisation. When an authorisation application already contains all the necessary and duly completed documents on the date of application, this will substantially reduce the application processing time.

Possibility to obtain a global export authorisation:

Apart from its role as a control body the Strategic Goods Control Unit also wants to act as a facilitating body in the implementation of its responsibilities. The application procedure for an export authorisation is very time-consuming. However, with the possibility of using a global export authorisation the Strategic Goods Control Unit aims to offer a more flexible solution for exporters which themselves devote the necessary attention to end-user and transactional controls. The granting of a global authorisation to a large extent depends on the exporter offering sufficient guarantees that it respects the legislation and carries out its own controls of the intended end use and the intended end user. These guarantees can be given by means of an ICP which is part of the internal business structure.

For example: The possibility to realise exports within the framework of a global authorisation allows exporters greater flexibility in terms of customer prospecting and delivery times.

3. CHARACTERISTICS

The Strategic Goods Control Unit identifies 9 important components of a good ICP. Below you will find for each of these components a brief explanation and several tips which may be helpful to you as an exporter. It will depend on your company profile how you can integrate these 9 components into your company-specific ICP.

3.1. SENIOR MANAGEMENT COMMITMENT

An ICP must be supported and endorsed by the company's senior management. It must be clear that it is a shared responsibility for all the members of staff within a company and therefore also for senior management. The executive or management board must make a clear **commitment to compliance**. This may translate into a formal policy declaration and a clear structure.

Resources:

- **Policy declaration**
- **Appointment/recruitment of a Chief Export Control Officer who is responsible for:**
 - > developing and elaborating the ICP;
 - > designing an ICP evaluation tool;
 - > updating the ICP with new regulations, new countries for prospecting, etc.;
 - > maintaining contacts with the competent authorities;
 - > dealing with and monitoring suspicious orders/applications;
 - > handling internal communication on the ICP;
 - > providing direction to the people in charge of ICP evaluation and training;
 - > appointing an Export Control Officer for each company department;
 - > ...
- **Policy instruction for middle management which is responsible for the development and implementation of the ICP:**
 - > General guidelines and framework;
 - > Establishing a permanent annual (or bi-annual) reporting obligation to the management committee
- **Development of a clear structure:**
 - > Using an adjusted organisational chart or flow chart;
 - > Identifying responsible employees or a responsible unit (and deputies in case of absence)
- **Regular follow-up and evaluation by senior management.**

3.2. LEGISLATION

The ICP is fleshed out on the basis of the regulations concerned. For the export of dual-use items, this is **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. Account should also be taken of **sanctions regimes** issued by the EU with regard to certain countries and/or regions, as well as of national regulations. Some of these sanctions regimes specifically target (specified) dual-use items and/or specified destinations and/or end uses. If relevant for the exports concerned, these regulations naturally need to be anchored in the ICP. Implications and obligations resulting from these sanctions regimes must be picked up by the ICP so that company exports can be screened for this.

Legislation:

- Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of export, transfer, brokering and transit of dual-use items, as amended;
- Decision of the Flemish Government of 14 March 2014 regulating the export, transit and transfer of dual-use items and the provision of technical assistance;
- Sanctions regimes:
 - **North Korea:** Council Regulation (EC) No 329/2007 of 27 March 2007 concerning restrictive measures against the Democratic People's Republic of Korea, as amended;
 - **Iran:** Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010, as amended;
 - **Syria:** Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011, as amended;
 - **Russia:** Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, as amended.

An overview of the EU sanctions regimes is available at:

http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf.

Changes or additions are often made to the basic regulations of these sanctions regimes. These can be found on the aforementioned link. The idea is to constantly update the ICP by implementing new and/or additional measures, in order to keep the internal control system up-to-date.

On the basis of the regulations it must then be determined for every specific export whether an export authorisation is to be applied for. The ICP must describe the application procedure in an accurate and detailed fashion, in order to make it easy to follow and implement by the members of staff who are in charge within the company. It must be clear where the required application forms can be found and which are the competent authorities concerned.

In Belgium, the Regions have competence for exports of strategic goods. The Regions also act as so-called front offices for inquiries about sanctions regimes. If necessary, they will refer you to the competent federal departments.

FLANDERS - based exporters can contact:

DEPARTEMENT INTERNATIONAAL VLAANDEREN
DIENST CONTROLE STRATEGISCHE GOEDEREN
Boudewijnlaan 30, 1000 Brussel
TEL: +32 2 553 48 80
FAX: +32 2 553 60 37
E-MAIL: csg@ivvlaanderen.be

Exporters based in WALLOON REGION can contact:

S.P.W.
Direction Générale Opérationnelle de l'Economie, de l'Emploi et de la Recherche
Direction des Licences d'Armes
Chaussée de Louvain 14
5000 Namur
TEL: +32 81 64 97 51
FAX: +32 81 64 97 60
E-MAIL: licences.dgo6@spw.wallonie.be

Exporters based in the BRUSSELS-CAPITAL REGION can contact:

DIRECTIE BRUSSELS INTERNATIONAL
City Center
Kruidtuinlaan 20
1035 Brussel
TEL: +32 2 800 37 27
FAX: +32 2 800 38 24
E-MAIL: calu@sprb.brussels

3.3. PRODUCT CLASSIFICATION

As exporter you are deemed to know your products and to screen them on the basis of the applicable export regulations.

Annex I of Council Regulation (EC) No 428/2009 contains a list of all products (including software and technology) that are classified as dual-use items and to which this Regulation applies. The idea is for you to label your products with the corresponding category from this Regulation, so that it can be indicated in the ICP that an authorisation is required for the export of these products.

If you act as trader, you either need to check with your suppliers whether a product is mentioned in this European Regulation or ask for the technical specifications and carry out this technical check yourself. If so desired or if necessary, the technical experts of the Strategic Goods Control Unit are at your disposal for advice.

The different sanctions regimes as well often include specific products that are subject to an export authorisation or are even entirely banned from export to a specified country. This must be reflected in the ICP.

Therefore, in terms of **product classification**, the ICP must answer the following questions:

- What are the technical specifications of the product?
- Is the product mentioned in the Regulation on dual-use items?
- Is the product mentioned in the sanctions regulations against a specific country?
- Under which category on the control lists can the product be placed? Is it eligible for decontrol or a more flexible exports regime?
- Does the product require an export authorisation? If so, which?

The classification 'dual-use' does not depend on the country of destination/end use, nor on the (given) end use. It is the technical specifications of the item itself which determine whether or not it features on the list of dual-use items in Council Regulation (EC) No 428/2009.

For example: If a company wants to export Triethanolamine, it must give 1C350.46 as classification number for dual-use (in accordance with the last relevant amendment of Annex I of Regulation (EU) 428/2009, in casu by the delegated Regulation (EU) No 1382/2014).

3.4. TRANSACTION SCREENING - SALES PROCESS

The sales process is preferably monitored by a computerised (electronic) system, so as to allow the necessary checks to be incorporated at each stage of this process. In this way problematic or suspicious transactions can be noticed at an early stage. Your company's sales department must register these irregularities in the electronic system, so as to inform the person in charge of the ICP, as well as the other members of staff in the company, like for instance the production department, order picking, accounting, etc., who are involved in the ordering and delivery of goods to customers.

Attention also needs to be devoted to the so-called **catch-all clause** which is embedded in Article 4 of Council Regulation (EC) No 428/2009. This clause stipulates that an export authorisation is still required for **items not listed in the control lists**, if there are indications that they will be used to produce or develop chemical, biological or nuclear weapons or missiles capable of delivering such weapons or if they are intended for military end-use in countries which are subject to an international or European arms embargo.

Therefore, the **sales process** must be closely monitored. Apart from the product classification, this can be achieved by integrating the following elements, amongst others, into the computerised system:

- red flags: a system of red flags which automatically reports irregularities and blocks this order until, following analysis, it can be manually unblocked by the people in charge;
- an indication of whether or not an export authorisation is required, either on the basis of the product or on the basis of the end use;
- an indication of which authorisation and/or customs documents are required to export a specific product;
- a timeline of the customer contacts and the actual order;
- catch-all clause: red flag if Article 4 of Council Regulation (EC) 428/2009 is possibly applicable;
- schematic representation of the sales and exports process;
- processing times of export authorisation applications.

3.5. END USE

The intended end use of the exported item must be verified for each order. This information is primarily obtained via contacts with the customer and following consultation of open, i.e. publicly accessible, sources on the end user concerned. To obtain a number of guarantees, an **end-user certificate** (hereafter called EUC) must be drawn up and signed by the customer at an early stage of the sales process. In this certificate the intended end use is clearly specified and the consignee of the items commits to not using these items for proliferation purposes or the production of weapons of mass destruction. This document also indicates whether it concerns a defence-related end use and specifies the exact location of the items and the ordered quantities. This is an important document to make your customer more accountable with regard to the use of strategic goods. The idea is to have the end-user certificate ratified by a competent authority in the country where the end user is located, in order to also have official confirmation that the intended end use will take place by a recognised and existing end user. The standard EUC form can be downloaded from www.vlaanderen.be/csg

An individual export authorisation must at all times be applied for when the export of dual-use items is planned to a military or defence-related end user.

As far as the **end use** is concerned, the ICP must make sure that members of staff pay attention to the following elements:

- Is the indicated end use logical?
- Has a normal quantity of the product been ordered?
- Does the end use tally with the business activities of the end user?
- Has an EUC been drawn up?
- Has the EUC already been certified by a competent authority on-site?
- Is any information about the end user available on open sources, which clearly shows the nature of the business activities?
- Are the goods installed on-site by the exporter?

3.6. CONSIGNEE - END USER

An ICP must thoroughly address the importance of screening the consignee and/or end user, since the nature of the customer's business activities is a major indicator of the intended end use of the items.

Again, the end-user certificate is a basic component of the screening. A competent authority (like for instance the Chamber of Commerce, the Ministry of Economy or the local Belgian embassy) in the country of destination will indeed verify whether the company concerned exists and is registered and/or whether the statements and the signature in the EUC are authentic.

In **contacts with customers** one must be alert to the following matters, among other things:

- Is any information about the end user available on open sources?
- Does the consignee feature in the sanctions regulations against the country of destination concerned?
- Is the consignee located in a country which is subject to international or European trade restrictions?
- Is it clear which are the customer's business activities?
- Did personal contact take place with representatives of the consignee/end user?
- Has an EUC been drawn up? Are the statements contained therein clear? Has it been duly and fully completed?
- Does the end user have an address (not merely a PO box)?
- How did the contacts with the customer go?
- Are the terms of delivery clear?
- Is the customer a distributor? If so, are the end customers known? Can sufficient guarantees be offered for a proper and civil end use?

3.7. TRAINING

Given the nature of the ICP (flexible, up-to-date), members of staff must frequently be trained and informed about how it works. The training/information sessions must clearly highlight that the implementation and proper functioning of an ICP require a concerted effort and joint responsibility.

Not only the members of staff who are directly in charge of implementing the ICP should be informed of this mechanism. The system should be known throughout the company so that everyone is able to be alert to potential problems. Therefore, it is advised to integrate the ICP into company-wide training programmes. It goes without saying that the parties which are directly involved should frequently receive further training regarding the ICP. A large part of this training will relate to new legislation, adjustments in the lists of items and new sanctions regimes.

The following elements must be addressed in ICP **training**:

- Regulations
- Importance and relevance of the ICP for the company
- ICP as a shared responsibility
- Functioning of the ICP
- Structure/schematic representation of the ICP
- Pitfalls
- How to detect suspicious orders?
- How to make an accurate product classification?

3.8. REPORTING

Reporting within the framework of an ICP consists of two parts. On the one hand, the internal reporting of irregularities. On the other hand, the reporting to the competent authority.

The ICP is intended to detect irregular orders and to make sure the members of staff who are in charge of this within the company are immediately notified for purposes of further monitoring. That is why swift and efficient internal reporting needs to take place, preferably on the basis of a number of established procedures, or - automatically - by entering data in the electronic ICP system. It should in any case be clear which members of staff are in charge and should be contacted and which action is subsequently to be taken to regularise the situation.

One of the conditions of use of a global export authorisation for dual-use items is the submission of an annual report to the Strategic Goods Control Unit of the exports made within the framework of the authorisation concerned. This report is part of a company's ICP and should contain the following elements¹:

- a description of the exported items with their corresponding (sub)category in Council Regulation (EC) No 428/2009,
- the value and quantity for each export of dual-use items,
- the dates on which the items were exported,
- the name and address of the consignee and end user.

In addition, the sales documents must be kept for a period of 7 years. These sales documents include the order, the invoice, the end-user certificate, customs declaration documents, etc.

¹ As specified in Article 11 of the Government of Flanders Decree of 14 March 2014.

3.9. EVALUATION - AUDIT

To maintain and maximise the effectiveness and efficiency of the ICP, it is advised to carry out an internal audit at regular intervals. This is part of a process of continuous improvement of internal business processes.

The ICP is preferably evaluated by an entity outside the sales department in order to guarantee an independent opinion. Depending on the company profile, it can also be opted to contract out the audit to an external specialist.

The Strategic Goods Control Unit can carry out an audit as well if so desired by an exporter of dual-use items or if the Unit deems it necessary within the framework of a specific export authorisation application.

Characteristics of an audit:

- conducted on a regular basis, preferably annually
- preferably conducted by another company entity or an external agency
- consists of ad-random inspections

CONCLUSION

This guide was compiled by the Strategic Goods Control Unit which is the competent authority for the control on the import, export, transit and transfer of strategic goods, i.e. defence-related items, other equipment which may be used for military purposes, law enforcement equipment, civil firearms, their parts and components, ammunition and dual-use items and technology.

More information about this control function, the export control policy and the activities of the Unit is available at

www.vlaanderen.be/csg

Please do not hesitate to send your feedback, remarks or suggestions regarding this publication to the Strategic Goods Control Unit at **csg@iv.vlaanderen.be**

Colofon

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Flanders
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