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Internal Compliance Programmes: Main Elements

STCU Spring University on Export Control for the GUAM Countries
Kiev, Ukraine 20-24 May, 2019

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A fundamental question

- Is it really possible for a system of norms, rules and decision making procedures to avert the diffusion of sensitive knowledge and safeguard it from misuse?

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A Definition:

- Designed by who?
- Legally binding or not?
- To...
- In synergy with?

A Definition: Cont'd

Export Management System

Export Management and Compliance Program

- A set of operational policies and standardized procedures within a firm or a research organisation to assure adherence to national export control laws and regulations.

Trade Management System

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Why ?

❖ **Effective tool to anticipate and cope with the most intriguing cases** (e.g. intangible transfers of technology)

❖ Enhance **business efficiency**, perspectives and management

❖ Improvement of the **communication** between the competent authorities and the exporters

❖ Assurance of the safe delivery of commodities to lawful end-users (contributing **to non-proliferation**)

❖ Saving exporters from contraventions of export control law (...and subsequent **penalties**)

❖ Increase the awareness within an organisation & infusion of an export **control culture**

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Motivations (in practice)

❖ **Administrative sanctions** (fines, temporary suspension of exporting activities, lifting of trade facilitations)

❖ **Reputational damage**

❖ **Criminal penalties**

❖ **Corporate Social Responsibility**

NB: Previous infringement and prior communication/outreach by the authority

What does an ICP include?

1. Top management commitment
2. Organisation structure, responsibilities & resources
3. Training & awareness raising
4. Transaction screening process and procedures
5. Record keeping and documentation
6. Performance review, audits, reporting & corrective actions
7. Physical & Information security

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Available sources of info:

EU and National Paradigms	Other sources (EU and int. level)
EU MS Guidelines (BE, NL, DE, UK, DK)	WA List of advisory questions (2003)
Recommendation for the Directive 2009/43/EC	WA ITT best practices (2006)
EU P2P (EUCOTT)	WA ICP guidelines (2011)
Japan (METI), Australia	SEESAC (2011)
US EXBS 2017	JRC Technical Note (2013)
BIS Compliance Code of Practice	EIFEC Code of Conduct
US BIS Self Audit Module	ISO 19600

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EU Recommendation for ICP Guidelines (2019)

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

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1. Top-Level management commitment to compliance

- **Written statement and support from top-level management (top-down):**

    - corporate commitment statement

    - define expectations, consequences, main message

    - communicate to all employees

- **Results to sufficient organisational, human and technical resources**

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II. Organisation structure, responsibilities, resources

- **Clear structure and definition of responsibilities:**

    - organisational chart & allocation of responsibilities (in written)

    - one person bearing overall responsibility

    - at least on person in charge of XC (not necessarily exclusively)

- **Access to necessary info by staff:**

    - dissemination of info on XC resources & responsibilities

    - specific requirements for staff (job descriptions, conflict of interest, no of technical & legal personnel)

    - compliance manual & IT support (if necessary)

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III: Training and awareness raising

- **Training of XC staff:**
  - regular training plan
  - in-house and use of national/EU trainings
- **Awareness raising for employees at all relevant levels:**
  - general awareness raising
  - incorporate lessons learned and feed reporting

IV: Transaction screening process and procedures

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 entities[6];
  - 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.

Annex I

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.

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Annex II

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;

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IV: Transaction screening: *item classification*

- **Transaction screening in general:**
  - manually or automated
  - in case of doubt contact the competent authority
- **Item classification:**
  - Licensable or not?
  - Gather info about possible misuse
  - Request info from your supplier
  - mention DU relevance in the commercial docs

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IV: Transaction screening: *transaction risk assessment*

- **Checks on embargoed, sanctioned and sensitive destinations & entities:**
    - consult list of sanctions
- **Stated end-use and involved parties screening:**
    - know your clients and end-use sector
    - ask for end-use statement (if necessary)
    - check Annex II for red flags

IV: Transaction screening: *transaction risk assessment*

- **Diversion risk screening:**
  - risk indicators for diversion
  - check Annex II again
  - take into account catch-all considerations
- **Catch-all process:**
  - ensure you have one in place
  - notification to competent authority if an issue arises
  - swift flow of info if exporter is informed by the authority

IV: Transaction screening: *license determination & application*

- Contacts with competent Authority

- Be aware of available types of licenses and controlled activities

- Be aware of additional TC measures (e.g. for technical assistance)

IV: Transaction screening: *post-licensing*

- **Final checks**

- **Procedure to stop export or put items on hold, if necessary**

- **Ensure that terms and conditions have been complied with (e.g. reporting)**

- **Any change to exporting company's details or to those of the intermediaries and end-users may affect the validity of license**

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V: Performance review, audits, reporting and corrective actions

- **Performance review for day-to-day compliance:**
  - random checks (monitor the workflow & detect wrong-doings)
- **Audits:**
  - develop and perform audits
- **Reporting and corrective actions:**
  - whistleblowing and escalation procedures
  - document any suspected measures & corrective actions
  - dialogue with competent authority

VI : Recordkeeping and documentation

- **Legal document storage, record management and Traceability of TC activities** (accountability, audits, day-to-day compliance and risk assessment):

  - verify the legal requirements

  - consider inserting record retention requirements in contracts

  - filing and retrieval system (in paper or electronic)

  - consistent storage allowing for sharing with authorities

VII: Physical and Information Security

- **Prevent unauthorised removal or access to items & technologies:**

    - physical security (e.g. restricted access areas)

    - information security (e.g. user access controls, antiviruses, file encryption, audits trails and logs)

Export Compliance in different settings

Organisation Structure

Industry

- Proprietary research – applied – private funding
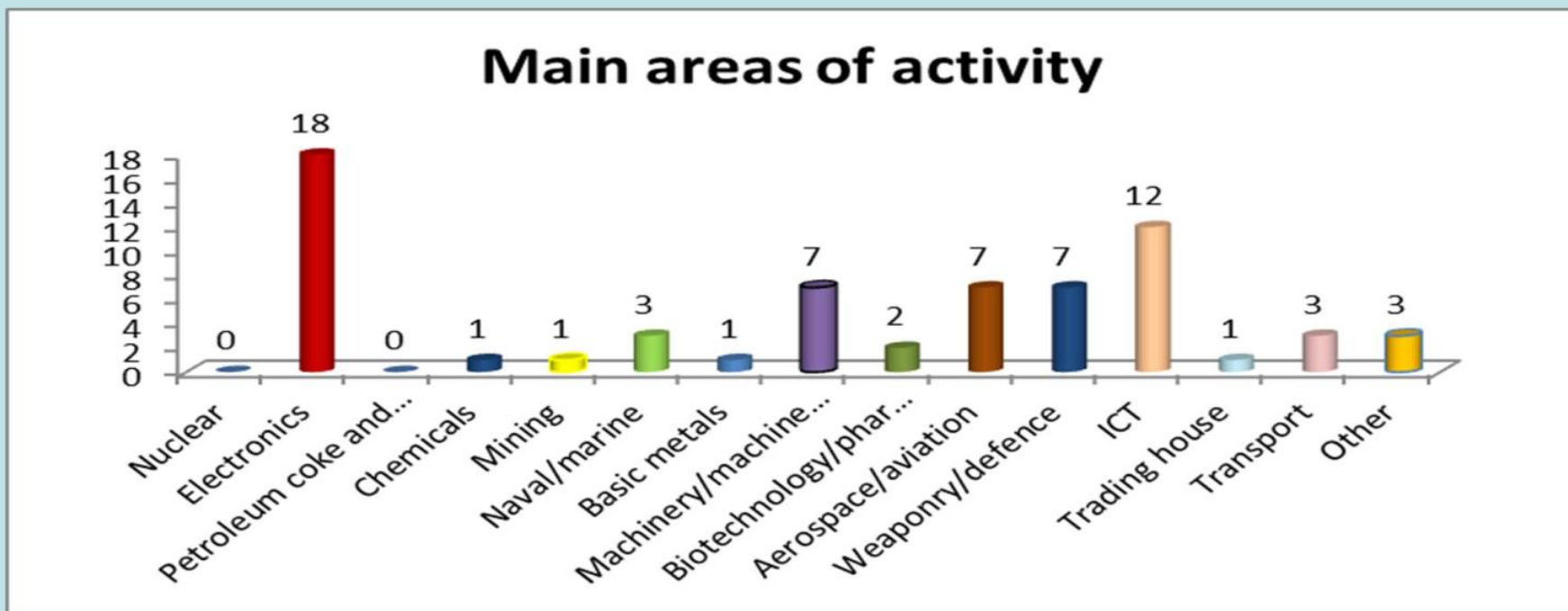- Profit oriented, government oversight

Research

- Open research – basic – public funding
- Academic Freedom- "publish or perish culture"

Monitoring ITT via Technology Control Plans

❖ **Physical security** (*e.g.* security perimeter, safe storage and restricted access);

❖ **Information security** (marking of e-documents, secure file transfer methods *etc.*);

❖ Specific **procedures for** any **export authorisations** required;

❖ **Personnel screening** and foreign visitors' checks;

❖ **Training** of authorised persons prior to receiving access rights;

❖ **Record keeping**

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Implementing ICPs: the industry experience (based on e-survey/companies)

Main areas of activity

Area	Value
Nuclear	0
Electronics	18
Petroleum coke and...	0
Chemicals	1
Mining	1
Naval/marine	3
Basic metals	1
Machinery/machine...	7
Biotechnology/phar...	2
Aerospace/aviation	7
Weaponry/defence	7
ICT	12
Trading house	1
Transport	3
Other	3

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Implementing ICPs: the industry experience (cont'd)

Pie chart legend:
- 0-9 employees
- 10-49 employees
- 50-249 employees
- >250 employees

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Implementing ICPs: the industry experience (based on e-survey/companies)

❖Stand-alone or part of a broader internal control system?

❖Compliance structure vs. overall responsibility

❖Resources: > 10

❖57% maintain collaboration with academia

❖25% conduct basic research

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Challenges for industry

Most challenging factor

28% Operationalising policies and procedures
23% Embedding export compliance objectives into existing processes and tool
10% Collaborating with other departments
13% Communication of risk
18% Risk assessment
10% No Answer

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How to adopt an ICP (key issues)?

❑ **Understand* – Design/Implement – Readjust**

*Initial Risk Assessment

✓ Key competencies & scope

✓ Governance model & level of awareness (size, structure, mentality)

✓ Type of research vs. Business Activity (technology rating)

✓ Main partners and funding sources (foreign involvement) vs. know your customer/supplier

*Sensitivity- **P**rocesses – **O**bligations (SPO)

How to proceed? A trusted relationship

Authorities:

- ✓ Set **clear-cut rules**

- ✓ Operate a transparent & **efficient licencing system**

- ✓ Share practical guidance for facilitating export compliance measures

- ✓ Conduct **targeted outreach** and other information exchange and awareness raising initiatives.

- ✓ Provide **incentives/rewards** to compliant exporters

Exporters :

- ✓ **Know their products** as well as their **customers and suppliers**

- ✓ Collaboration/**communication** with authorities

- ✓ Reinforce their **accountability** towards authorities, their shareholders, civil society and more broader towards the public

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Sources of information:
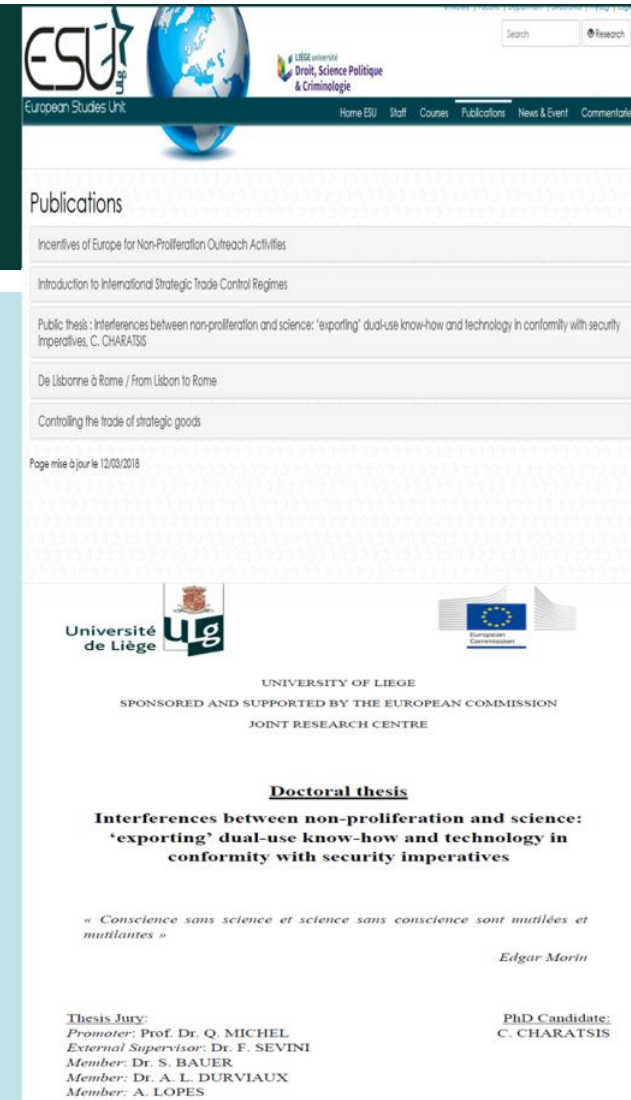
Readily available:

- [EXBS Internal Compliance Guide](#)
- [PhD Thesis, C. Charatsis (ULg & EC)](#)
- [SIPRI Guidance for Actors in Academia](#)
- [WA Guidelines 2011](#)

Forthcoming:

[Chaudfontaine Group Publication](#)

[EU Guidelines](#)

THANK YOU!

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Back up slide 2: monitoring ITT