



INTERNAL COMPLIANCE AND EXPORT CONTROL GUIDANCE DOCUMENTS FOR THE DEFENCE AND AEROSPACE SECTOR

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INTRODUCTION

This SIPRI Good Practice Guide outlines the sector-specific, compliance-related guidance material that is available to companies and other actors in the defence and aerospace sector that might be affected by the European Union's arms and dual-use export controls.¹ It covers guidance material produced by national governments, the EU and other bodies, as well as the publicly available Internal Compliance Programmes (ICPs) produced by companies in the sector.

The defence and aerospace sector is naturally subject to arms export controls, but some sub-sectors are also strongly affected by dual-use export controls. Companies in the space sector, for example, are more likely to be affected by dual-use export controls than by arms export controls. Moreover, the defence and aerospace sector is particularly affected by US controls on re-exports in addition to EU dual-use and arms export controls. Other compliance-related challenges facing the defence and aerospace sector are linked to the specific complexities and sensitivities that concern its exports and the differing interpretations and classifications of goods by member states. This is partly because the terms used in the dual-use and military lists, such as 'specially modified for military use', are open to interpretation by EU member states. This can result in items that are covered by dual-use controls in one member state being covered by the EU military list in another. Transfers of controlled military technology, whether tangible or intangible, through access or travel by employees, present another challenge. These points highlight the need for clear compliance-related guidance from the EU, industry associations and national authorities.

Given the sensitive nature of the goods and technologies produced in the defence and aerospace sector and the diverging interpretations of the export control frameworks at the national and EU levels, there is a clear need to

¹ For further information, see SIPRI, 'Challenges and good practices in the implementation of the EU's arms and dual-use export controls: A cross-sector analysis' (forthcoming).

SERIES SUMMARY

● The scope of European Union (EU) dual-use and arms export controls has expanded in recent years to cover a wider range of goods, technologies and activities. This means that a broader range of sectors and actors are now affected by controls. This expansion has been accompanied by efforts by governments and the EU to incentivize the adoption of internal compliance programmes (ICPs) by companies and other affected entities. An ICP is an arrangement that a company or other entity puts in place to ensure that it is complying with dual-use and arms export controls. However, while the requirement to have an ICP is becoming more mainstream, the guidance available on how one should be established and maintained is often generic and fails to take into account the specific needs of different affected sectors and actors. This SIPRI Good Practice Guide is one of a short series that helps fill this gap by collecting available sector or actor-specific compliance-related guidance material. This Guide presents guidance material that is available to companies in the defence and aerospace sector. It covers guidance material produced by national governments, the EU and other bodies, industry associations as well as publicly available ICPs produced by companies in the defence and aerospace sector.



make companies in the sector aware of the compliance-related guidance material that is already available and to fill any remaining gaps.

GOVERNMENT- AND EU-ISSUED GUIDANCE MATERIAL

United Kingdom Department for International Trade, Export Control Organisation, 'Aerospace and defence sector: international trade regulations' (7 Aug. 2012), <<https://www.gov.uk/guidance/aerospace-and-defence-import-and-export-regulations>>.

The British Government provides online guidance on export controls for the aerospace and defence sector. There is an introduction to export controls and import regulations in the sector, and to the specific requirements for companies from the sector with regard to dual-use and military goods. The guidance also describes the different kinds of export licences and trade facilitations that are available to companies exporting from the UK. The document stresses the need for companies in the sector to research the destination of their exports, with regard to both the applicable import restrictions of the country concerned and the end-use/end-user.

Ministère de la Défense, Direction générale des relations internationales et de la stratégie (DGRIS), 'Mini guide sûr le contrôle des exportations d'armement' (May 2016), <http://www.defense.gouv.fr/content/download/472496/755575/file/20160501_DSPC_Mini%20guide%20Controle%20Export%20Armements-ALLs.pdf>.

The French Ministry of Defence provides a guide on the export of armaments (in French only). The guide introduces the different export licences applicable to arms exports and the associated processes and conditions, such as a 'certificate of non-re-exportation'. In addition, the guide discusses post-shipment controls and a number of exceptional cases, such as arms manufacturing authorizations and the transit of arms through French territory. More detailed information and the necessary documentation can be found online: <<https://www.ixarm.com/-Les-exportations-d-armement->>.

Australian Government, Department of Defence, Defence Export Controls (DEC), 'DEC policy on the assessment of military aircraft and parts', <<http://www.defence.gov.au/ExportControls/Aircraftpolicy.asp>>.

The website of the Australian Department of Defence provides sector-specific information on export controls on military aircraft. The website provides an overview of relevant definitions and regulations, and of the industry sector. It also sets out the assessment criteria for classifying parts as dual-use or strictly military. There is a section on sector-specific frequently asked questions.

US Department of State, Bureau of International Security and Nonproliferation, Export Control and Related Border Security (EXBS), 'Guidance for defense manufacturers', <<http://icp.rit.albany.edu/index.php/industry-sector-specific-tools/guidance-for-defense-manufacturers>>.



The EXBS Program of the US Department of State provides targeted guidance for the defence and aerospace sector on its 'Internal Compliance Program Guide' website. The guide introduces the relevant terminology and provides definitions, as well as a targeted compliance checklist for the defence industry and a list of screening questions and risk indicators. The guide also discusses issues specific to foreign companies dealing with US re-export controls and contains a section on brokering controls. In addition, the guide provides a comprehensive list of links to relevant websites and resources on the arms trade, sanctions, embargoes and restricted parties.

OTHER GUIDANCE MATERIALS AND SUMMARIES OF ICPS FROM THE AEROSPACE AND DEFENCE INDUSTRY

Leonardo, 'Controls on exports and sensitive countries', <<http://www.leonardocompany.com/en/chi-siamo-about-us/etica-compliance/controlli-sulle-esportazioni-e-paesi-sensibili>>

The main elements of Leonardo's 'Trade Compliance Program' are publicly available on the company's website. There is an overview of the applicable national, EU and US legislation as well as of the provisions, and definitions of the roles and responsibilities, of the various multilateral regimes. Leonardo recommends the adoption of 'Group Directives, Industry Directives and Procedures', and the establishment of a risk analysis process. The Program also discusses the classification of goods, clients' verification processes, due diligence checks on intermediaries and pre- to post-screening of different export categories.

BAE Systems, 'Responsible business: How our business works', <<http://www.baesystems.com/en/our-company/corporate-responsibility/responsible-business/how-our-business-works>>.

On its website, BAE systems provides an overview of the compliance-related elements of its business practice and of internal compliance management in the contract process to ensure compliance with internal and external controls. Summaries and factsheets on, among other things, its 'Code of Conduct' and 'responsible trading principles' provide further insight into the allocation of various management and control tasks within the company. The document on 'supplier principles' outlines a number of compliance principles and conditions that companies must fulfil in order to become part of its supply chain.

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