



Model strategic trade control law components

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Objectives

- External constraints and commitments;
- Essentials legal components;
- Legislative and administrative articulation;

National strategic trade control law consists in the **implementation of commitments** take by Government authorities within

- **International legally binding treaties** CWC, BWC, NPT, UNSCR 1540, 1929 (Iran),...

Tend to universality

- **International politically binding instruments** : MTCR, WA, AG, NSG, Zangger Committee

Do not tend to universality

External constraints and commitments



- **Regional** legally or politically binding instruments

European Union (TEU and TFEU)

- **Bilateral** legally or politically binding instruments

Euratom/US agreement for the peaceful use of nuclear energy

- **Extraterritorial effect** of third State's legislation

US deemed export, Helms-Burton Act

External constraints and commitments



National room for manoeuvre is tied by external constraints and their potential political sensitivity

Law essential components



Essential components of a strategic trade control law shall be:

- **An authorisation** system;
- **A verification** and control principles;
- **Sanctions**;

An authorisation system shall include

- Authorisation principle

Including a non-proliferation principle and/or a prohibition of certain transfers ?

- Scope of implementation

Operations concerned : export, transit, brokering

Definition of strategic items : dual-use items and/or conventional weapons ?

Establishment of catch-all clause provision(s)

Conditions of supply

- **Objective** elements
- No often determined by the law
- *Ad minima* two

Ratification of certain **treaties** (NPT,
CWC, BWC)

Comprehensive safeguards agreement
for nuclear items

Criteria of supply

- **Subjective** elements
- Elements to be assessed by the Licencing Authority while considering a licence application

Not necessarily comprehensive

EU Code of conduct

The trade control law shall also define:

- **Authorities** in charge of analysing licence applications and issuing denials or authorisations

Administrative and political process

- **Appeal procedure** in case of denial or authorisation

Law essential components



The law shall determine:

- Types of authorisations

Individual, global, general

- Specific procedure to use it

ICP requirement a specific condition for global authorisation

Verification and control principles

- Establishment of information exchange mechanisms between authorities

Consultative commission ?

- Requirement of certain documents such as end-user certificate, Delivery Verification Certificate

Sanctions

- Effective;
- Proportionate;
- Dissuasive;

Might include penalties for operators who have breach their *non-proliferation responsibility*

Violation of level 2 and 3 of catch-all clause

Strategic trade control law is **an element** of national control regime built up by **two categories** of acts:

- Legislative acts

Revision might be lengthy

- Implementing acts or administrative acts

Therefore the law shall draft as part of one **integrated system**

Revision of the lists, possibility to restrain the use of certain types of licences

To conclude

National export control regime has to
be understandable for operators to
whom it will be applied