

MINISTÈRE DE L'EUROPE  
ET DES AFFAIRES  
ÉTRANGÈRES



# RECENT DEVELOPMENTS OF EXPORT CONTROL LEGISLATION IN FRANCE : POST-LICENSING CONTROLS



# KEY FACTS ABOUT THE FRENCH EXPORT CONTROL SYSTEM

Legal framework : French Defense Code and Customs Code

Principle of prohibition of exports (unless an authorization is granted by French authorities). Ensures a governmental control over all the transfers.

A case by case study of licence applications.

Focus on prior assessment of licence applications.

Interagency review of applications through a commission (CIEEMG), placed under the authority of the prime minister

Decisions are based on national policy criteria and compliance with international obligations.



# FRENCH EXPORT CONTROL SYSTEM FROM THE COMPANIES' POINT OF VIEW

An increasing number of licence applications : need to maintain a strong, secured and efficient control over exports.

At the same time : high expectations from companies.

French companies are required :

- to determine the nature of the items with regards to the different export regulations (dual use, arms export control) ;
- to apply for the necessary licenses when required;
- to manage the operations in accordance with the parameters of the licenses which have been delivered: respect of the perimeter of the licenses and their provisos
- to fulfil reporting and transparency obligations.

A licence is needed from the negotiation phase : anticipation needed.



# OUTREACH TO PRIVATE COMPANIES

- ❑ **National outreach through seminars and regular meetings with exporters**
  
- ❑ **Training sessions for industry**
  
- ❑ **Working groups with industry to address specific topics**
  - ❑ **Evolutions of the law/regulation**
  - ❑ **Simplifying procedures**
  - ❑ **Improving information support system**
  - ❑ **developments in the international field**
  - ❑ **...**



# POST-LICENSING CONTROLS : KEY FEATURES

In place since June 2012.

**Purpose : checking the proper use of export licenses once granted. Ensure the enforcement of regulation. Not a post-shipment verification.**

## **Main principles :**

- FR suppliers and recipients are required to **keep detailed records** of their transfers and exports activities. **All records are to be kept by the exporters during 10 years**
- They are required to send to the administration EUC/NRC and copies of contracts
- They are required to **report twice a year** to the Administration on any signed contracts and for each delivery



# POST-LICENSING CONTROLS : KEY FEATURES

**Monitoring system supervised by a post-licensing control committee (CMCAP) in the Ministry of armed forces.**

**Controls are carried out by sworn officers (DGA)**

- **Documentary checks**
- **On-site controls** (including Information Support System)

**Potential severe penalties**

- **Lawsuits ;**
- **Administrative sanctions (export licenses suspended/revoked, customs fines ) ;**
- **Injunction to ensure conformity (New possibility)**



# POST-LICENSING CONTROL : INJUNCTIONS

## 2016-982 Ordinance-law of July 20<sup>th</sup> 2016

*In case of internal export control procedure's failure causing or potentially causing a breach in the exporter obligations, the administrative authority may formally notice the exporter to provide corrective actions within a specific delay.*

*In case of non fulfilment of these actions the administrative authority may apply sanctions.*

### **A formal injunction may request corrective actions related to:**

- Responsibility chain within the company
  
- Internal compliance procedures :
  - Items ranking
  - Provisos and conditions compliance procedures
  - Handling and correcting faults
  - Keeping records and making reports
  - Handling transfer of technology
  
- Staff training



# POST-LICENSING CONTROLS : PENALTIES

**Decree 2017-151 (8 February 2017) :** financial penalties when injunction is not respected.

## Heavy penalties for :

- Illegal transfers, whatever license concerned (maximum 5 years imprisonment and 75 000 euros)
- Breach in post-licensing control duties (maximum 5 years and 75 000 euros)
- Breach of commitment of the senior executive (maximum 3 years and 45 000 euros)
- Non respect of injunctions : up to 150 000 €

**In addition, the company as a moral person may be subject to same penalties.**







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