











EU Institutions (some)

Commission - legislative proposals & implementation

Council – Co-legislator - represents Member States

Parliament – Co-legislator – represents citizens

Court of Justice - for correct interpretation of EU law



What is the EU dual-use regime ?

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

- Principal elements -

common control system and harmonised policies for enforcement and monitoring in all MS

common list of dual-use items subject to export controls

N.b. Sanctions and arms under separate legal regime

Aims of the EU dual-use regime

provide EU-wide legal and procedural basis for the control of external trade in dual use items

ensure freedom of movement of most dual use items in the Internal Market

enable EU MS to fulfil their commitments under NP treaties and arrangements, and UNSCR 1540

Provide for administrative co-operation between MS

Who does what in the EU (1)?

The Commission

- Legislative proposals - Control List updates, CGEA
- Publishing information on national implementation
- Encourage co-operation and information exchange
- Interact with EU industry

Who does what in the EU (2)?

The Council and the Parliament
- Co-legislators since Lisbon Treaty-

- Examine/amend the draft legislation proposed by the Commission
- Adopt the final text
- ❖ Council Working Party on Dual-use
- ❖ Parliamentary Committees

Who does what in the EU (3)?

The Member States

- Implement EU legislation (delivery of authorisations)
- Enforcement and penalties
- Adopt complementary legislative and administrative measures
- Participate in international export control regimes

Regulation 428/2009

Current Regulation in force since 08/2009 (first Reg. 1994)
Introduces controls on brokering and transit
Extends the definition of intangible transfers of technology

- Annex I – EU Dual-use Control List
- Annex II – Community General Export Authorisation
- Annex III – Model Authorisations & common elements for NGA
- Annex IV – List of items subject to intra-Community controls

Export authorisations

Four types of export authorisations

Community General Export Authorisations to a White List of destinations

Individual Export Authorisation (issued to one specific exporter, for one end user and covering 1 or more items)

Global Export Authorisations (issued to 1 specific exporter for a type or category of dual-use item valid for exports to specified end-users in 1 or more countries)

National General Export Authorisations (defined by Member States)

Assessing export applications

Industry responsible for classifying items and submitting licence applications

**Member States assess export applications
Assessment criteria: art. 12 of the Regulation**

Cooperation among Member States in assessing certain licence applications (art. 19)



Intra-EU Transfers (1)

Annex IV of the Dual-use Regulation

Items requiring an authorisation for transfers between EU MS

- ❖ Goods
- ❖ Technology

Exception to the principle of freedom of movement within the Internal Market

Intra-EU Transfers (2)

Licensing mechanism provides means for MS to gather information on exports and transfers relevant for AP

Licensing requirement also applies to technology transfers

- ❖ Hurdle to sub-contracting within the Internal Market
- ❖ Hurdle to international cooperation within the Internal Market

Intra-EU Transfers (3)

Almost the entirety of NSG Part 1 is caught,
❖ exceptions D/N/LEU

The NSG Part 2 items in Annex IV are mainly sensitive items related to weaponisation
(some NSG Part 2 items are included on the EU Military List)



Euratom Agreements (1)

Three types

Euratom Safeguards Agreements with IAEA

Euratom bilateral co-operation agreements

Peaceful uses of nuclear energy

Research and development

Euratom is also party to several international conventions, e.g CPPNM

Euratom Agreements (2)

Negotiating Procedure

- Commission proposes negotiating mandate
- Council (i.e. the MS) adopts the mandate
- Commission negotiates the agreement
- Council approves draft agreement before conclusion

Euratom Agreements (3)

- Not a pre-condition for nuclear trade
- Member States may also conclude nuclear cooperation agreements providing that their provisions do not conflict with a Euratom Agreement
- 7 Euratom Peaceful Cooperation Agreements:
 - ❖ USA (1996), CA (1959 !), AUS, KZ, UKR, JP, UZB
 - ❖ In the pipeline : South Africa, Russia

Euratom Agreements (4)

- Responsibility for implementation shared with MS
- e.g. accountancy and control – Commission
- physical protection – MS
- Tracking of obligations on equipment/materials is the responsibility of the Commission
- Procedures for management of obligations set out in subsidiary Administrative Arrangements
 - e.g. reporting

Euratom Agreements (5)

Typical *obligations* in Agreements

- Advance notification of transfers
- Tracking of material and equipment
- Reporting balances
- Derived nuclear material
- Re-export – prior consent
- Peaceful use
- International Safeguards and fall-back safeguards
- Restrictions on further processing
- Physical Protection

Complicating factor – multiple obligations

Euratom Agreements (6)

Complicating factor – multiple obligations

e.g. BWR MOX,

- DU – flag 1
- NU – flag 2
- LEU – flag 3
- Pu – flag 4

Why not align fully with NSG rather than NSG as a minimum standard ?



EU (Nuclear) Sanctions Regime (1)

Legally and to a degree operationally different from Dual-use Regime

Consolidated Regulation 428/2009 (Iran)

- ❖ Restrictive measures following the UNSCR
- ❖ Autonomous EU restrictive measures

EU (Nuclear) Sanctions Regime (2)

Prohibition

- items on the EU dual-use control list
- Bushehr exception respected
- additional items in Annex 1 of 428/2009

Nonetheless limited possibility for MS to authorise *prohibited* transfers

Authorisation

- certain other nuclear items (Annex IV)



Websites

Dual-use (with links to national authorities)
<http://ec.europa.eu/trade/creating-opportunities/trade-topics/dual-use/>

Sanctions
http://ec.europa.eu/external_relations/cfsp/sanctions/index_en.htm

Thank you for your attention!

Finlay.MacLean@ec.europa.eu
