

**END USE**

**END-USER-SCREENING**

**I. End-use control**

The question of end-use control and end-user screening is of central importance to the whole system of export control. End-use control are to prevent sensitive exports as far as possible. From our point of view end-user-screening is a part of a systematic approach to end use control.

States may establish a flexible and effective system of end-use control. This system should ensure a differentiated approach, especially with regard to :

- ◆ be able to properly evaluate each individual case,
- ◆ the different sensitivity levels of consignee states concerned,
- ◆ the reliability of the persons involved in the transactions,
- ◆ the principle that sensitive cases need more efforts than cases of less sensitivity.

In accordance with this system, States may combine different elements depending on the potential risk, in order to safeguard the end-use. In order to achieve this aim States may use a „pick and choose“ procedure, consisting of different core and optional elements. Core elements are always implemented, optional elements are available in addition. Consequently, cases with a lower sensitivity may be solved with a lower degree of efforts and the resources for export controls are focused on sensitive cases.

By the help of effective rules and a transparent co-operation between the authorities on the one hand, and the companies on the other, States will be able to ensure an efficient control level.

When selecting different elements, States

- ◆ may take into account that in case of the export of armaments and dual-use items different questions will partially arise in connection with end-use safeguards.
- ◆ could work for embedding all measures of end-use safeguards into an system, having preventive and repressive effects.
- ◆ may use End-Use Certificates to be an element of end-use control. Effective end-use control can, however, not only be achieved with the instrument of end-use certificates. End-Use Certificates cannot substitute a responsible export control to be exercised by both, the authorities and the companies.

End-use control may as well include, i. a. industry outreach programmes, a close co-operation between licensing and customs authorities, company audits at relevant export enterprises as well as efficient and adequate penal provisions. In addition, States will enhance co-operation and transparency through information exchange on a case by case basis by national Points of Contact.

States could distinguish between three phases of an export when dealing with end-use control:

- ◆ the pre-licence phase,
- ◆ the application procedure and
- ◆ the post-licence phase.

Within these three phases the different elements can be taken into consideration which, in part, have an interrelation beyond the individual phases. In case of some elements, the major benefit may be to gather experience for future procedures.

### 1. Pre-Licence Phase

End-use control starts already in the run-up to an application procedure.

The awareness of industry plays an important role to achieve the objectives. The exporter must be aware of the legal requirements and his share in the responsibility. That is why the exporting company should have an efficient and transparent Internal Compliance Programme (ICP) for which a responsible person should be nominated. In addition, an indispensable core element is the proper information of the companies by the controlling authorities in order to raise their awareness of the existing legal provisions. Against this background, States should take all necessary measures to facilitate the exchange of information among the competent authorities. This exchange of information also serves to guarantee an uniform and efficient control level and enhances the transparency of the procedure.

These elements form the basis for being able to clear up potential risks of abuse before a given application procedure.

The following core and optional elements may be distinguished in the first phase:

#### *Core elements on the part of authorities*

- ◆ Awareness-Raising through providing information on export control
- ◆ Establishment of a Point of Contact (POC) to exchange information of the governments/authorities

#### *Core elements on the part of exporters*

- ◆ Internal Compliance Programme (ICP), i. e. especially establishment of export control organisation in the companies, taking specific conditions of each single company into consideration

- ◆ Ensure the required transparency as part of ICP by clearing up the facts of export and verification of end-use/ final destination by using all the information available to the exporter, particularly in case of suspicious circumstances
- ◆ Duty of documentation in the business documents of the exporter

*Optional elements on the part of the authorities*

- ◆ Consignee-related early warning and country-profiles
- ◆ Intergovernmental assurance of controls of possible re-exports

*Optional elements on the part of the exporter*

- ◆ Physical and technical security arrangements preventing diversion, e. g. securing the transported items and the transport route as well as safeguarding the storage sites.
- ◆ Information of authority on business contacts to sensitive consignees

2. Application procedure

The licensing procedure itself covers all the measures taken in connection with a specific application for an export licence in order to verify the data provided by the exporter under the viewpoint of end-use safeguards and to come to a final decision.

The following core and optional elements are to be distinguished in the second phase:

*Core elements on the part of the authority*

- ◆ Plausibility check in the forecasting decision to be taken. The criteria are:
  - technical aspects
  - internal knowledge and other information of the authority
  - submitted documents and papers
  - reliability of the persons involved in the transaction  
(exporter, consignee, end-user and other persons involved)
  - risk analysis
- ◆ Consideration of Denials

*Core elements on the part of the exporter*

- ◆ Presentation of true, complete and conclusive application papers, incl. contract documents. It also includes the use of standard forms, containing minimum information about
  - exporter
  - consignee/end-user/purchaser/other persons involved;

- description of goods with technical data
- personal signature with name in block letters
- ◆ Submission of end-use certificates (governmental or private) containing minimum information.

*Optional elements on the part of the authority*

- ◆ Contact to intelligence services
- ◆ Granting of licences under certain conditions (e.g. governmental or private Delivery Verification Certificates /DVC's)
- ◆ Check whether additional statements in governmental or private EUCs, are necessary, e.g. governmental certification of authentication
- ◆ effective export control system in consignee state (e. g. effective legal and organisational measures guaranteeing an effective export control)
- ◆ Exchange of notes, formal governmental declaration excluding certain uses and guaranteeing the final destination

*Optional elements on the part of the exporter*

- ◆ Thorough explanation of facts; presentation of additional documents to export licence application:
  - company's profile with detailed information on consignee/end-user
  - project description
  - information on service contracts or acceptance reports
  - Letter of credit, L/C
- ◆ Presentation of end-use certificates with additional optional elements.

### 3. Post-Licence Phase

This phase is to confirm the findings on which the granting of an export licence was based, in particular through the information exchange among the authorities and services involved as well as through the exporters' checks. An additional option is e. g. to obtain governmental or private delivery verification certificates and the compliance with other requirements resulting from the licence.

The following core and optional elements are to be distinguished in the third phase:

*Core elements on the part of the authority*

- ◆ Information exchange about denied applications (denial exchange)

- ◆ Cooperation cooperation and information exchange between controlling authority, customs and prosecution and controlling authorities
- ◆ Enforcement through regular foreign trade audits
- ◆ adequate and effective penal provisions to punish infringements

*Core elements on the part of the exporter*

- ◆ Periods of safekeeping of the accounting documents

*Optional elements on the part of the authority*

- ◆ Monitoring of obligations with default action
- ◆ Control of utilisation of issued licence by controlling authority to prevent that licences are applied for bogus deals or the licence was exceeded
- ◆ Governmental Post Shipment Controls
- ◆ Export reports/import reports
- ◆ Re-export licences, resale by consignee is subject to licensing reservation of the country from which the goods were delivered

*Optional elements on the part of the exporter*

- ◆ DVC , submission of governmental or private verification of delivery or reception of the goods
- ◆ Export notice, industry's duty to inform about forthcoming exports
- ◆ Private Post-Shipment Controls, Operation or maintenance services on the location or other verification mechanisms by exporter
- ◆ Publication of collateral clauses towards consignee, the exporter is to inform the consignee that the licence was granted under conditions and which are its conditions

## **II. End-user screening**

End-use control and end-user screening is an integral part of the examination by the licensing division. During the application procedure different elements can be taken into consideration. One step is the check whether documents submitted by the exporter are complete. Another point is the check of all information about the end-use and the end-user, e. g. "end-use certificates". If the licensing officer needs further reference information, a statement from services may be requested or the applicant will be asked to provide additional documents.

In Germany one very important step is the risk analysis by the licensing division. The backbone is a „confidential“ or „secret“ classified data base with information about applicants in Germany, countries of concern, purchases, consignees, end-users and military or civil projects. The purpose of the data base / end-user screening is to support decisions, to discover front - or mailbox – companies, procurement networks and other sensitive projects, overall to minimize the risk of diversion to proliferant end-use.

Sources are different in nature, first of all secret services but also customs offices, non proliferation regimes, exporters examinations, media and – last but not least – own perceptions.

The procedure in Germany (BAFA) is as follows:

- ◆ Preliminary check of all companies
- ◆ Analysis with respect to sensitive information
- ◆ Documentation of all relevant information
- ◆ Consultation of secret service (if necessary)
- ◆ Legal examination whether a licence is required
- ◆ Decision

The final step of the end-use control by a licensing officer is the so called „risk analysis“. This contains a plausibility check whether the delivered data are complete and conclusive. Furthermore, the evaluation of all available information and the comparison with information provided by the applicant with respect to credibility.

The result of this investigation shows that an application is plausible if the data given by the applicant are substantiated / conclusive and that there is no further information available which may cause reasonable doubt with respect to the applicant's data. The decision about a plausible application is based on end-use control and end-user screening.

But we should never forget that we are talking about a “forecasting judgement”.