

# ENFORCING EUROPEAN UNION LAW ON EXPORTS OF DUAL-USE GOODS

ANNA WETTER

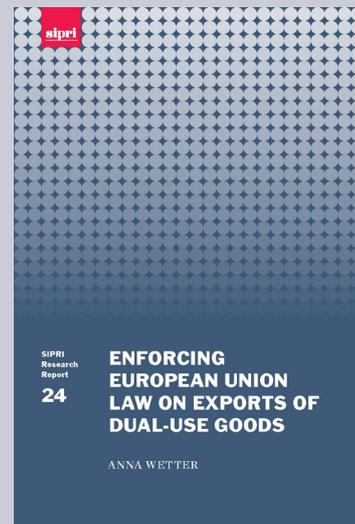
Controlling the export of dual-use goods—goods with both civilian and potential military applications—is a key tool for the non-proliferation of arms, including weapons of mass destruction (WMD). Because of the high volume of trade across the borders of the European Union (EU), the enforcement of EU export controls on dual-use goods relies on preventive measures. Among these are intelligence-based monitoring and risk assessment, the imposition of export licensing requirements and customs registration procedures. To complement such measures, states need to set up effective systems for the prosecution of export offenders and ensure that their legislation allows for appropriate penalties that reflect the potentially grave consequences for security that can result from illicit dual-use exports. As well as penalizing export violations, such prosecutions may have a preventive function, dissuading or incapacitating potential violators.

To date, the detection, investigation and prosecution of dual-use export violations in the EU have often relied on the dedication of individuals in national export control enforcement systems. This is because knowledge of export controls and awareness of their links to non-proliferation have been lacking, as have both established enforcement mechanisms and experience.

## DUAL-USE EXPORTS IN THE EU FRAMEWORK

The main EU export control tool is the EC Dual-use Regulation (Council Regulation (EC) no. 1334/2000), which provides a legislative framework for national dual-use export controls in the EU that is directly applicable in each of the member states. The Dual-use Regulation includes regularly updated lists of controlled dual-use items that reflect those of the main international export control regimes. However, because of the division of powers within the EU it is up to the individual states to decide what regulations and arrangements are needed at national level to give force to the common legislation.

In the EU context, dual-use export controls and cooperation are affected by three areas of EU competence in which the EU institutions and the member states have varying degrees of influence and legislative power. Trade in dual-use items is regulated by European Community law. This allows the passage of supranational legislation such as the EC Dual-use



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***Controlling the export of dual-use goods is a key tool for the non-proliferation of weapons of mass destruction***

Regulation. One of the most important considerations is to balance the imperative to minimize security risks while disrupting regular EU trade as little as possible. The control of dual-use exports is also linked to the EU's security and foreign relations, making it directly relevant to the Common Foreign and Security Policy. Finally, dual-use export violations necessitate the engagement of actors in different EU member states. Thus, cooperation between national police and judiciaries, currently found in the third EU 'pillar', can greatly facilitate the detection, investigation and interception of unlicensed dual-use export activity and the prosecution of export control violators.

Europol, the EU's law enforcement agency, and Eurojust, which is responsible for the coordination of investigations and prosecutions between member states, could potentially play much greater roles in export control enforcement. New European initiatives in the area of electronic information sharing between customs agencies could potentially greatly benefit the enforcement of dual-use export controls.

### **ENFORCING UN SECURITY COUNCIL RESOLUTION 1540**

In 2004, the UN Security Council unanimously adopted Resolution 1540, obligating all states to refrain from supporting, by any means, the acquisition, use or transfer of nuclear, chemical or biological (NBC) weapons and their delivery systems, in particular for terrorist purposes, by non-state actors. The Security Council also included a paragraph that obligates all states to set up effective law enforcement systems to ensure Resolution 1540's proper implementation. Although terrorist attacks involving conventional weapons have killed many more people than incidents involving NBC weapons, by adopting Resolution 1540 the Security Council emphasized the risk and the concern that terrorist groups will be able to develop WMD.

Seen in this light, enforcing export controls and bringing offenders to justice—which requires effective enforcement systems that, importantly, are in accordance with the rule of law—is essential for achieving international non-proliferation objectives. Yet, as this report shows, most EU member states have conducted few if any prosecutions for export control violations related to dual-use goods, despite having large industries producing or trading in such items. It could be that they have virtually spotless prevention and compliance records, but it is perhaps more likely that the national authorities have failed to prevent or to detect illicit exports of dual-use goods.

### **RECOMMENDATIONS**

1. National legislation governing export controls should be clear and comprehensive and regularly reviewed.
2. National export control enforcement systems should also be regularly reviewed.
3. Structures, agreements and modalities for international cooperation in dual-use export control enforcement should be established, covering, for example, intelligence and detection, investigation, extradition and interception.



4. Structures, agreements and modalities should also be established for coordination, cooperation and communication between national export control enforcement actors.
5. Expertise on various aspects of enforcing dual-use export controls should be concentrated in single departments, agencies and networks.
6. Steps should be taken to build up and maintain the knowledge base on enforcing dual-use export controls—for example, through training, maintaining institutional memory, and sharing of learning and experience between agencies, between countries and between export control regimes.
7. There should be a clear and codified division of competences and responsibilities between the various national enforcement actors.
8. Front-line customs officers should be equipped with the training, information and incentives they need to identify suspicious activity and consignments.
9. Information relating to illegal dual-use exports should be shared between enforcement agencies including—to the extent possible—intelligence services.
10. Effective monitoring and risk-management systems, including data from many sources, should be maintained and made accessible to the relevant enforcement actors, including customs officers.
11. The relevant enforcement actors should be provided with adequate and clear legal powers—for example, powers to arrest suspects, seize evidence and suspect consignments, and carry out communication surveillance. These powers should apply even in special economic zones.
12. The allocation of resources to dual-use export control enforcement should adequately reflect the needs of the export control systems and the gravity of the potential proliferation consequences of unlicensed dual-use exports.
13. Awareness-raising and information activities should be conducted targeting the relevant enforcement actors in order to alert them to the importance of export controls; the international, EU and national legislation; and the structure and functioning of the national enforcement system.
14. Outreach activities should be conducted targeting exporting industries and others in the exporting chain, along with research communities, alerting them to correct export procedures and licensing requirements as well as the relevant legislation and potential sanctions.

***As the grave security consequences that can spring from illegal exports of dual-use goods become better understood, this invaluable guide will help public prosecutors, law enforcement actors, policymakers and academics to familiarize themselves with this complex but crucial aspect of the European Union non-proliferation regime***

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