European Code for Export Compliance

EU-CEC
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1. Introduction

2. Export Compliance

3. Background

4. EU Export Compliance: Principles and Values
   
   Foundation Principle: Unicuique suum
   
   a) Transparency
   b) Compliance
   c) Accountability
   d) Consistency
   e) Effectiveness

5. Code of Practice
   
   1. Management Commitment to Compliance
   2. EU-ECAP - European Export Compliance Administration Program
   3. Appointment of Person in charge
   4. Risk Assessment
   5. Information and Training
   6. Record Keeping
   7. Compliance Monitoring and auditing / assessment
   8. Handling / reporting Compliance problems / Corrective actions
   9. Suspicious enquiries - orders
   10. Integration with quality management practices

6. Glossary
Introduction

The European Code of Export Compliance (EU-CEC) aims to encourage the dissemination of best practices and principles in Export Compliance Management as defined in the EU-Export Compliance Framework (EU-ECF) with all EU and non EU actors involved in import / export of goods and services.

The purpose of the Code is to provide Organizations with an internationally accepted, easy available set of principles to frame and structure the way in which they understand, govern, administer, implement, evaluate and communicate their Export Compliance.

Principles are primarily intended for use by Organizations developing an accountable and strategic approach to Export Compliance. They will help such an Organization understand, manage and improve its Compliance performance.

The value of these principles lies in their comprehensive coverage and the flexibility of their application.

This Code describes the guiding principles and practices to promote an European culture of compliance with the rules and laws (Compliance) within the financial, economic, industrial, associative system of private and public sectors.

EIFEC aim to contribute by all appropriate steps to disseminate among the Organizations behaviours of excellence through proper management, transparency and audit of the activities performed in the production and transfer of goods and services.

Those who adhere to this self-regulatory code will find the basic principles, values, practices and standard to implement effective management programs in line with the EU and National States regulations (EU Compliance).

This edition updates the previous edition of December 2014. The principles and values are kept unchanged, but take account of the experiences and of monitoring and control occurred during these months. It takes also into account the changes (legislative and practice) that occurred during this period and especially of the latest EU regulations.

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1 EU is the acronym for European Union referred also, but not limited, geographically or economically.
Definitions of Export Compliance

Export Compliance is a specialized multidisciplinary Framework, which provides support to Organizations in Compliance Risk Management, i.e. the risk of legal or administrative sanctions, financial losses or reputation deterioration for failing to comply with laws, regulations and legislation, codes of conduct and good practice ("laws, regulations and rules").

Export Compliance covers all activities of import and export of goods and/or services, tangible and intangible assets (including the transfer of means of payment), that somehow are subject to regulations applicable to transactions between two different states/jurisdictions.

The term Organizations refers to all Bodies, companies of any nature, associations, both public and private undertakings that have activities falling within the scope of this Code.

The term Export is also intended as import in a broader sense, as an indissoluble operation. Each export has an import. It includes exports, reexports or in-country transfers that are subject to control.

The term Item is defined as “products, software and technology, whether tangible or intangible.”

The term Transaction includes virtually any kind of interaction, including but not limited to selling, purchasing, loaning, licensing, renting, quoting, returning, repairing, providing services (including financial services), providing samples, visiting, meeting, training, making or receiving payment, hiring, acquiring or merging, accessing controlled data, and collaborating in research involving controlled data.

The term Internal Compliance Program (ICP) shall mean effective, appropriate and proportionate means and procedures, including the development, implementation, and adherence to standardised operational compliance policies, procedures, standards of conduct, and safeguards, developed by exporters to ensure compliance with the provisions and with the terms and conditions of authorisations.
Background

Today’s global marketplace is a very competitive and complex world for Organizations to navigate.

There has been a long history of business and government excesses and subsequent legal, public and political reaction. Response to criminal misconduct has resulted in legal sanctions, governance practices, compliance standards and cultural transformation.

Over the last 40 years, several major events in international business and subsequent legislation and regulation have shaped the way Organizations do their business.

In a globally integrated world, efficient Export Compliance with laws is only possible with co-operation at an European and international level.

The EU Governments rely on the due diligence of exporters to help ensure security and compliance with laws.

Concerns regarding security as well as the proliferation of weapons of mass destruction and terrorism have heightened.

Concerns about the growth of money laundering, payments flows without proper control and several other areas of import/export.

The diversion of dual-use items for dangerous and destructive reasons and many others laws violations can most effectively be prevented through strong public/private-sector partnerships.

Dual-use items have a commercial application and also can be of military, weapons-of-mass-destruction, or terrorist use.

Given the extent of products that may be so classified, as well as the potential for issues with regard to parties to a transaction, it requires Organizations in all industries to adopt an Export Compliance program (ICP), and the recommendation herein may be applied to all.

Sanctions are one of the EU’s tools to promote the objectives of the Common Foreign and Security Policy (CFSP): peace, democracy and the respect for the rule of law, human rights and international law.

Export Compliance is an important mechanism that supports operative governance. Compliance with regulatory requirements and the Organization’s own policies are a critical component of effective risk management.
Monitoring and maintaining Export Compliance is not just to keep the regulators happy, it is one of the most important methods for an Organization to maintain its ethical health, support its long-term prosperity, and preserve and foster its values and avoid or mitigate any potential legal criminal proceedings.

On a more practical level, the Export Compliance Administration Program (EU ECAP) is the specialized Internal Compliance Program (ICP) that supports the Organization’s business objectives, identifies the limits of legal and ethical behavior, and establishes a system to warn management when the Organization is getting close to (or crossing) a boundary or approaching an obstacle that prevents the accomplishment of an Organization’s purpose.

Once issues are identified, management must be prepared to respond quickly and appropriately to minimize the impact on the Organization (and the stakeholders, as appropriate).

Management should constantly improve its Export Compliance and ethics programs. This will enable it to better prevent, detect, and respond to similar misfeasance and/or malfeasance in the future.

European Commission Communication (COM2014) 244 has set strategic priorities in field of Export Controls where stated that Compliance efforts should be recognised through the facilitation of control and fast-track export processes by setting clear private industry compliance standards for use of simplified mechanisms as a substantial privilege granted to reliable exporters.

Self-regulation should be encouraged, standard requirements for ‘Internal Compliance Programmes’ (ICPs) could support a level-playing field within the EU.

Compliance and competitiveness are mutually reinforcing, as compliance reduces the risk of inadvertent supply of dual-use items to programmes of concern that exposes firms to penalties and reputational damage. Furthermore, options to promote convergence with customs’ “trusted operators” programme (AEO) or Export Compliance Certified Organizations could reduce duplication of controls and offer cost-effective avenues for both operators and administrations.
EU Export Compliance: Principles and Values
EIFEC EC1001OPS Standard

Unicuique suum

The foundation principle of justice, Unicuique suum or “to each its own”, is the necessary unifying principle to achieve the realisation of appropriate export compliance. This principle requires that all measures are appropriate to the uniquely specific organisations size and requirements. (Appropriateness)

Transparency

All Organizations act and communicate in a transparent manner, in their relation with EU, member states Institutions and all stakeholders, about operating Export Compliance policy, and the economic, financial and legal implications of each activity undertaken. (Commitment to Transparency)

Compliance

All Organizations act in conformity and compliance with all EU regulations as well as rules and laws of the EU Member States where business and activity or import and export have place. (Commitment to Export Compliance)

Accountability

All Organizations act acknowledging, assuming responsibility for and being transparent about the impacts of their policies, decisions, actions, products and associated performance.

Consistency

All Organizations act consistent with prior acts and statements. Organizations must be consistent in applying the Export Compliance principles, methods, practices, and procedures.

Organization will ensure that the same rules and behaviors are followed in all activities being reported. If a change is made to an Export Compliance method, the effects of the change must be clearly disclosed.

Effectiveness

All Organizations undertake to use all its available means, including labor, financial resources, and goods and services either received or created, in such a way as to pursue the Organization’s Export Compliance purposes to the highest degree possible.
Code of Practice

Organizations adopting the European Code for Export Compliance aim to implement the Principles written above and will develop, adopt and put into operation Export Compliance policies and procedures that uniquely address their Organization-specific requirements (Unicuique suum Principle or Appropriateness).

Organizations decide which Export Compliance measures are appropriate and tailored to the nature of their export and import activities.

Several factors such as the Organization’s size, the end-use and sensitivity of products, the geographic location of business and customers, the relationships with business partners, volume of exports, product restrictions, and complexity of national export procedures will influence how an Organization structures its operative activity.

However, there are certain key elements that are recommended for all Organizations, because those key elements serve as a foundation for accountability for any Organization.

By establishing best Export Compliance practices from the beginning, you will have a program that evolves and grows along with the business, and is flexible to adapt to regulatory changes.

The following are the 10 key elements identified by major experts in Export Compliance: Governments, Regulatory Bodies, Banks, Institutions, and special professionals.
10 EU Export Compliance Key Elements

1. Management Commitment to Compliance

Organization Senior Management must make a firm, strong commitment to comply with applicable EU and national export laws.

In order to ensure adherence to export laws and regulations, foster and nurture a widespread Organization culture of compliance, the Senior Management actively must:

- **Communicate an Export Compliance Commitment** Statement, carrying the authority of the Chairman, Chief or other Decision Makers, giving a clear indication of the Export Compliance policy of the Organization.
  
  Such a statement should be drawn to the attention of all employees involved in export activity in any form suitable for the Organization. The Statement should be communicated to contractors, consultants, interns, freight forwarders, distributors, sales representatives, joint venture partners, and any other stakeholders directly or indirectly involved in the import/export activity.
  
  The policy statement should be written, clear and concise, formatted consistently with other management policy statements.

- Promote Export Compliance with all parties involved as condition to do business with the Organization.

- Pledge adequate resources to develop, implement and maintain the Export Compliance program; evaluate and ensure EU-ECAP effectiveness.

- Ensure that appropriate organizational officials (internal or external) are designated with responsibility for the Export Compliance program.

- Promote a connection between the organization's core values and the Export Compliance Program;

2. EU-ECAP European Export Compliance Administration Program

Organizations should draw up and operate written compliance procedures (EU-ECAP) that are effective for the business concerned and reflect as far as possible the best practices illustrated in this Code.

The objective is to promote effective and appropriate procedures for processing enquiries/orders in accordance with export laws requirements.

This will help Organizations to ensure that everything is done to prevent an export of goods being made without a valid license or authorization or in violations of laws.

Organization must develop a set of formal written policies and procedures - an **EU Export Compliance Administration Program (EU-ECAP)** - that provides sufficient safeguards at each key step in the export process management.
Organizations should chart the export process to capture it in a comprehensive, detailed manner and define step-by-step procedures for daily operational implementation for employees that will be involved in export program.

Charting the process should start where the process begins, i.e., customer service, sales, research, administration office, etc., and follow it through to completion and should identify each action and decision point.

3. **Appointment of person(s) in charge**

Each Organization should nominate as Export Compliance Officer (ECOF), the person(s) responsible of compliance issues. Where necessary, duties relating to Export Compliance may be delegated to an external Export Compliance Officer and an internal record maintained of responsibilities relating to each stage of Export Compliance.

The record should be updated as necessary.

4. **Risk Assessment**

To eliminate risks of export laws violations Organizations must identify vulnerabilities in their export process. Key steps are:

- **Classification of all Items** that can be exported, and establish if are subject to any restriction of an export law; determine if they require a licence and what type of licence, by evaluating the nature of the goods / service, customers and destinations.

- **Screening and Profiling all third parties** involved in any transaction to prevent doing business with prohibited/restricted entities using an appropriate Transaction Screening process.

- **Item and Country Decision Table** (ICDT): Prepare, develop, maintain and use
  - Verify the licence application process/mechanism.
  - Chart the order flow from receipt of a request through shipment of ordered Items.
  - Identify all document file paths that form the entire transaction story and location of files.
  - Identify vulnerable steps where there is risk of export laws violations occurring.
  - Determine frequency of checks to be performed throughout the flow process.
  - Implement EU-ECAP screens that will eliminate the vulnerabilities.
  - Establish “stop,” “hold” and/or “cancel” criteria to prevent transactions from moving forward when checks fail.
  - Establish “release” criteria for transactions that have been stopped and escalated for further review.
  - Develop a narrative that describes the movement of the request and the responsible personnel who take action on the request at various steps.
5. Information and Training

The implementation and maintenance of an effective Export Compliance Governance requires continuous monitoring of changes and updates in the EU or national state laws, rules and regulations.

As consequences Organizations shall include a training component in their EU-ECAP. Training needs of staff in relation to Export Compliance should be assessed and fulfilled.

Procedures should be in place for acquiring details of changes/updates to legislation and disseminating them to relevant personnel.

A reference list of sources of information and contacts for advice is valuable.

Consultations with the national competent authorities must be promoted immediately when changes in the international political stability of some importing countries may involve risks of no-compliance.

Organizations should update their Export Compliance knowledge-base on a regular basis through training.

6. Record Keeping

Organization activities covered by export legislation should, as required by, maintain records of all managed activities for at least the minimum period as long as required by law.

To facilitate record keeping, Organizations should establish a policy on the time, mode and place for maintaining and storing records and who is responsible for the operation so that it is known what information is retrievable and how.

Including record-retention requirements in contracts with freight forwarders, brokers, and distributors, could also be useful.

Procedures for the inspection and quality assurance of records should be documented.

7. Compliance Monitoring and auditing / assessment

Organizations must protect the integrity of EU-ECAP by verifying that operational compliance procedures within all of the Organization export-related divisions and locations reflect the written compliance procedures, and are consistent with export regulations.

To identify and resolve inconsistencies between written and operational procedures, should establish a program of regular internal audit of the system for Export Compliance to maintain standards set in compliance procedures through periodic appraisal.

According to the size and complexity of the Organization the audit may be a self-audit
carried out according to a simple checklist of questions or it may be delegated to a central auditing function or third party qualified professionals.

8. Handling / Reporting Export Compliance problems / Corrective / disciplinary actions

Organization will set procedures, which provide clear guidance to all employees concerning what actions to take in the event of suspected incidents of export-related noncompliance.

Management must commit to conducting business in compliance with the letter and spirit of the law and commit to fostering a safe environment for employees who raise questions or concerns about compliance.

Corrective and disciplinary actions must be planned for non-compliance with company compliance policies and procedures and incidents contrary to export laws.

9. Suspicious enquiries - orders

Organizations must develop awareness among their employees to help in identifying suspicious orders. Where there is doubt about the bona fides of an order, the Organizations should consult the Export Compliance experts.

Company personnel need to be aware of these indicators. By notifying their suspicions to National authorities, Organizations can obtain advice and guidance in the light of more comprehensive information available.

10. Integration with Quality Management practices

Organizations must ensure:

• that all procedures and practices for management of Export Compliance regulations are integrated with any quality management systems applicable to them.

• that within quality management practices Export Compliance procedures are treated in the same manner and with equal importance, as other organizational procedures.
Accountability
Principle of acknowledging, assuming responsibility for and being transparent about the impacts of their policies, decisions, actions, products and associated performance.

Bodies
Alternative term for Organisation

CEEC
The Coalition for Excellence in Export Compliance (“CEEC”) is a voluntary group of experienced export compliance professionals and organizations that offers “Best Practices” standards for export compliance programs.

Consistency
Principle of having coherent behaviour with policies and statements. The behaviour must be regular and constant.

Effectiveness
Principle of using all available means with highest efficacy to pursue the goals to highest degree.

EIFEC
Is the acronym for the European Institute for Export Compliance.

EIFEC Number ERN®
Is the ID number of a Certified Organization (EU-C/ECO) attributed for the purpose of identifying Organizations or persons in order to ensure their traceability on an EU level.

EIFEC Product Number EPN®
Is the ID number of a EU- ECP Certified Product in order to ensure their traceability on an EU level.

EIFEC Standards
Are principles-based standards providing frameworks to help organisations become compliant. They address issues affecting governance, export models and organisational strategy, as well as providing operational guidance on export management and stakeholder engagement.

EU
Is the acronym for European Union referred also, but not limited, geographically or economically.

EU Directive
Is a legislative act of the European Union which requires member states to accomplish a specific result without commanding the methods of attaining that result.

EU Regulation
Is a legislative act of the European Union that becomes immediately enforceable as law in all member states at the same time.

EU-CEC®
Is the acronym for European Code of Export Compliance.

EU-C/ECO®
Is the acronym for European Export Compliant Organization. Certification issued to Organizations or Individuals that have successfully past the Verification/Certification process becoming a Charter member. Categories are EU-C/ECO for Organizations, EU-EC/ECOP for individuals; EU-C/ECOF for Compliance Officer.

EU-ECAP®
A set of formal written policies and procedures - an Export Management
and Compliance Program - that provides sufficient safeguards at each key step in the supply chain management to guard against sales of sensitive or dual-use technology to unauthorised parties or for unauthorised activities.

**EU-ECGL©**
Is the acronym for EU Guidelines prepared, based on the EU-CEC and EIFEC EC1001 Standards.

**EU-ECP©**
Is the acronym for EU Export Compliance Product programme, a system managed by EIFEC that registers, accounts, manages or removes Certification of Products made by an accredited Certifying Authority, outside the Organization.

**EU-ECR©**
Is the EU Export Compliance Register for all Organisations and self-employed individuals engaged in EU import/export.

**Export Compliance**
Export Compliance provides support in compliance risk management, i.e. the risk of legal or administrative sanctions, financial losses or reputation deterioration for failing to comply with laws, regulations and legislation, codes of conduct and good practice (“laws, regulations and rules”).

Export Compliance is inclusive of all activities or import and export of goods and/or services, tangible and intangible assets (including the transfer of means of payment), that somehow are subject to regulations tied to transactions between two different states/jurisdictions.

**Item**
Is defined as “products, software and technology, whether tangible or intangible”

**Organisation**
All bodies, companies of any nature, associations, both public and private undertakings which have activities of export or import and falling within the scope of the EU-CEC Code.

**Transaction**
Includes virtually any kind of interaction, including but not limited to selling, purchasing, loaning, licensing, renting, quoting, returning, repairing, providing services (including financial services), providing samples, visiting, meeting, training, making or receiving payment, hiring, acquiring or merging, accessing controlled data, and collaborating in research involving controlled data.

**Transparency**
Principle of being transparent according to EU frameworks.

**Unicuique suum Principle**
This principle requires that all measures are appropriate to the uniquely specific organisations size and requirements. (Appropriateness)
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