Export control responsibilities & human rights due diligence

Government of Flanders’ practical approach

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Strategic Goods Control Unit
www.dcsf.be
Export Control is a shared exercise and responsibility between authorities and the industry.

Human rights due diligence is an autonomous exercise and responsibility of the industry.
Internal Compliance Programme (ICP) Guidance
ICP - guidance

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ICP - guidance

1. What is an ICP?
2. Reasons for implementing an ICP
3. Risk profile
4. Core elements
1. What is an ICP?

- Company measures
- Working tool and facilitating instrument
- Tool to assess the risk associated with a transaction (e.g. use of goods for violation of IHL or HRL)
- Customised

➤ Risk profile
2. Reasons for implementing an ICP

Micro – level

- Complying with export control legislation
- Efficient export flow
- Obtaining knowledge of the end users
- Avoiding being listed
- Raising internal and external awareness
- Corporate reputation
- Condition for obtaining prior authorisation
2. Reasons for implementing an ICP

Macro – level

- Safeguarding international peace and security
- Complying with international commitments and trade restrictions
- ICP as part of corporate social responsibility (human rights due diligence)
3. Risk profile

To which extent should internal control measures take place within the organisation?

- Product range
- Customers
- Profile of exporter and organisation
4. Core elements

1. Top-level management commitment to compliance
2. Organisation structure, responsibilities and resources
3. Training and awareness raising
4. Transaction screening process and procedures
5. Performance review, audits and corrective actions
6. Recordkeeping and reporting obligations
7. Physical and information security
Core element 1: Top-level management commitment to compliance

Code of conduct ➔ Internal processes
Core element 4: Transactionscreening

Risk assessment

Item classification

End use, end user(s) and involved parties screening

Administrative processing following risk assessment

Human rights due diligence
Core element 4: Transactionscreening

- Pre-contractual phase: transaction screening
- Contractual phase: Human rights clause
- Post-delivery phase: report suspected misuse and act upon

Export control obligations ↔ human rights due diligence
The prior authorisation
Prior authorisation

Required to be granted the right to apply for export and transfer licences

What?

• Research into:

  • Trustworthiness and ethics
  • Internal compliance programme (ICP)

How?

• Advice from governmental partners
• ICP-screening procedure
ICP – screening procedure

Based on core elements from the ICP-guidance

E.g.:

“Is there a standard inclusion of a human rights clause in contracts, and does the clause attach consequences to non-compliance?”

“How do you assess the risk that defense-related products may be used in violation of human rights, international humanitarian law or other provisions prohibited by the Flemish Arms Trade Act?”
Outreach towards industry
Proactive outreach towards industry

One to one meetings
- Acquaintance
- Support towards prior authorisation

Introductory training sessions
- 2x/year

Webpage on export control obligations
- Human rights due diligence
- Estimation of export admissibility + guidelines
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