



Internal compliance programmes for foreign trade controls

Trade & Customs



Internal compliance programmes for foreign trade controls

The dynamic global environment forces global companies to constantly adapt to changing rules. This could be a challenge for your daily business transactions, introducing new risks associated with dual-use trade controls.

On 30 July 2019, the EU Commission published a standard framework with clear expectations of what an internal compliance programme for exports of dual-use items should include. This was further strengthened with the publication of the new EU Dual-use Regulation in September 2021. However, even though exporting dual-use items triggers the necessity of an internal compliance programme, the framework provided by the EU Commission goes far beyond this by also covering controls in relation to sanctioned countries, parties and end uses.

Companies nowadays are faced with technological advancements and international complexity. This complexity is even greater if they trade internationally. Effective trade controls depend, therefore, on a company's capacity to be aware of current trade restrictions. This entails an active effort to implement an internal control system for their supply chains and the way they do business. Hence, companies are encouraged to put in place a set of internal policies and procedures, also known as an internal compliance programme (ICP), for compliance with EU and national laws and regulations. There is no standard template ICP to suit every company. An ICP needs to be tailored to the size, structure, business scope, and, especially, to the business activity of the company and related risks.

How can KPMG help?

KPMG's Trade & Customs Team assists companies to identify, manage and mitigate risks associated with EU export controls, including embargoes, and dual-use trade controls in order to ensure compliance with relevant EU and national laws and regulations.

To achieve this, our team can help in implementing a clear organisational structure with well-defined responsibilities, considering the latest Commission Recommendation (EU) 2019/1318 of 30 July 2019 on internal compliance programmes for dual-use trade controls.



An effective internal compliance programme will give you confidence in your risk management and regulatory trade compliance arrangements but also help to not unnecessarily slow down your foreign trade activities.



What needs to be considered when introducing an ICP

It is of crucial importance when developing an ICP to keep it relevant to the company's organisation and activities, to make sure that internal processes are easy to understand and follow, and to capture the day-to-day operations and procedures.

Effective controls on trade in dual-use items (i.e. goods, software and technology) – those items that can have a civil and military use – are vital for countering risks associated with matters such as the proliferation of weapons of mass destruction (WMD) and the destabilise accumulations of conventional weapons.

The latest EU ICP recommendation is, in this way, intended to help companies to deal with export control requirements. For this reason, it is highly recommended that a company establish internal procedures and policies which can help to avoid infractions and fulfil a risk-based best practice approach, taking into account every core element of the EU recommendation on ICP.



Companies dealing with dual-use items are obliged to comply with strategic trade control requirements imposed under the laws and regulations of the European Union and its Member States.”



EU ICP 7 core elements

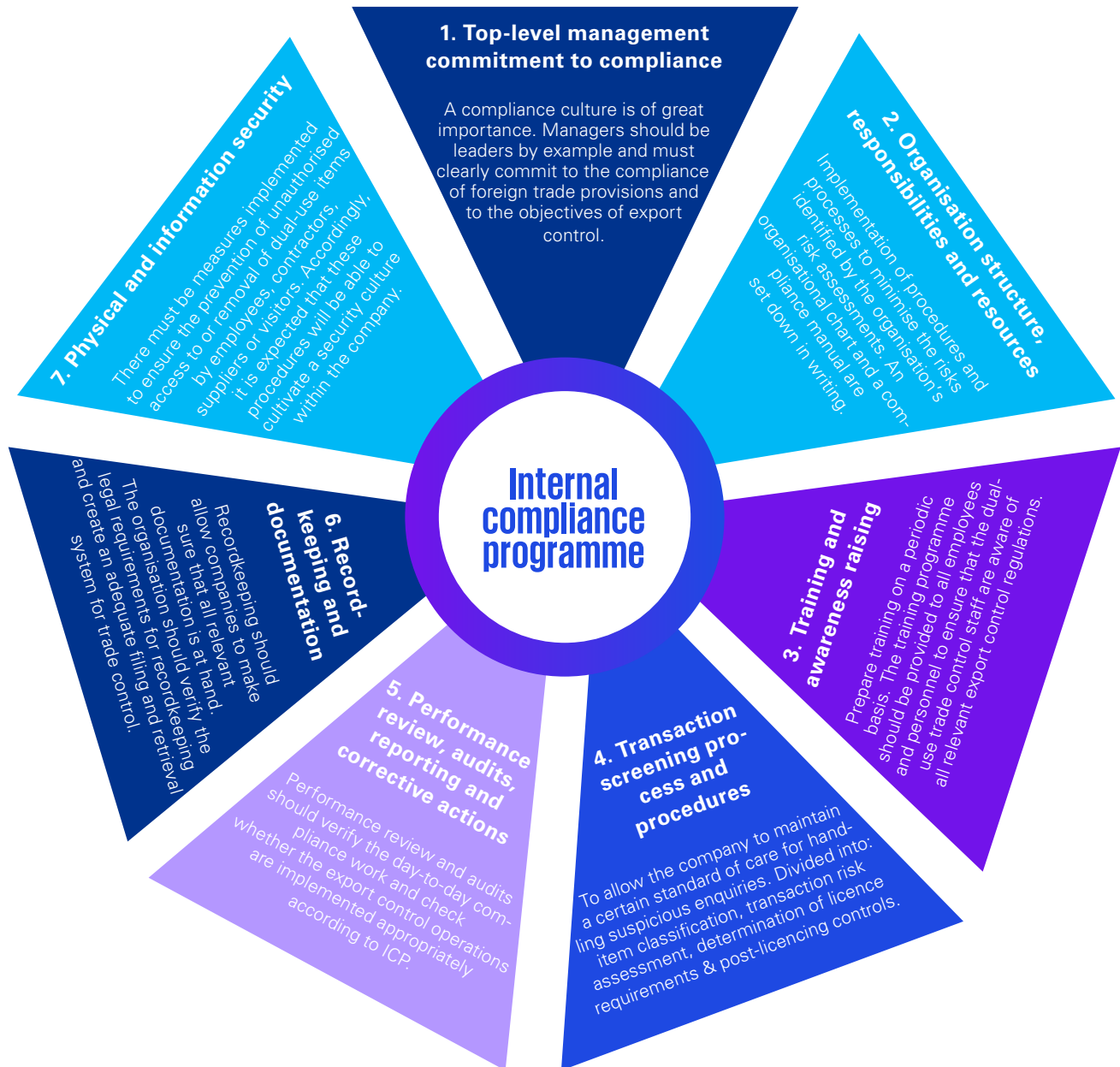
- 1** — **Top-level management commitment to compliance**
- 2** — **Organisation structure, responsibilities and resources**
- 3** — **Training and awareness raising**
- 4** — **Transaction screening process and procedures**
- 5** — **Performance review, audits, reporting**
- 6** — **Recordkeeping and documentation**
- 7** — **Physical and information security**

KPMG can help to implement an effective ICP based on an individual risk analysis in order to avoid several risks:

Violation of criminal and administrative laws, e.g.

- Unauthorised physical or electronical exports
- Release of economic resources to listed persons
- Based on sensitive end-use purposes
- Based on business with sanctioned countries
- Personal liability (especially concerning appointed top-level management)
- Loss of reputation

What our programme includes:



Furthermore, globally acting corporates may not only have to deal with the EU recommendations for internal compliance programmes but rather have to face also international export controls particularly such with an extra-territorial application.

Therefore, also internal trade regulations and respective standards for internal compliance programmes should be considered:

ICP – International Expectations

	US SCP (OFAC)	US ECP (BIS)	US - DDTC	EU ICP	CHINA ICP
1	Management Commitment	Management Commitment	Organisation Structure	Top-Level Management Commitment to Compliance	Drafting a Policy Statement
2	Risk Assessment	Risk Assessment	Corporate Commitment and Policy	Organisation Structure, Responsibilities and Resources	Establishing an Organisational Structure
3	Internal Controls	Export Authorization	Identification, Receipt and Tracking of ITAR Controlled Items/Technical Data	Training and Awareness Raising	Comprehensive Risk Assessment
4	Testing and Auditing	Recordkeeping	Re-Exports/Retransfers	Transaction Screening Process and Procedures	Establishing Examination Procedures
5	Training	Training	Restricted/Prohibited Exports and Transfers	Performance Review, Audits, Reporting and Corrective Actions	Developing Emergency Measures
6		Audits	Recordkeeping	Recordkeeping and Documentation	Providing Education and Training
7		Handling Export Violations and Taking Corrective Actions	Internal Monitoring	Physical and Information Security	Improvement of Compliance Audits
8		Build and Maintain Your Export Compliance Manual	Training		Retention of Archival Materials/Data Files
9			Violations and Penalties		Preparing Management Manuals

Challenge in practice

In addition to export control provisions CN, US and EU partially take counter measures (e.g. blocking provisions) against foreign jurisdictions, especially such with extraterritorial application and impact.

WHY KPMG?

We provide a variety of consulting services related to the management of export controls in a cross-border trade environment, taking into consideration the latest EU Recommendation and national regulations. This will help your company to ensure an overall well-functioning ethics and compliance programmes. In addition, we benefit from a global network of export control experts, allowing us to take into account specific local requirements in order to set up sustainable global ICPs.

Export Compliance - Our offer

Our team of experts assists global organisations to establish company-wide trade visibility, including compliance, monitoring and auditing across business units and affiliates.

If you have any questions about the latest EU ICP recommendation for export control purposes or would like to know more about our foreign trade services, please contact our team to learn more.

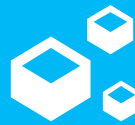
Our service for export control purposes

Development of export control ICP

Support to set up a defined scope and standard operating procedures

Risk analysis and Compliance assessments/reviews

Export compliance process and gap assessments



Programme audits and health checks

Audits and reviews ranging from broadscale global reviews to tailored checks on specific practices.



Outsourcing and managed services

We advise our clients to identify suitable solutions for outsourcing export control processes.



Export licence classification

Evaluation and classification to determine controls under applicable regulations. Create an export licence strategy in order to apply based on fixed processes and organisational structures.



Training

Assessment of training programmes.

Training programmes ranging from general awareness to skills training for export compliance professionals.



Voluntary self-disclosures & remedial measures

Compliance programme reviews. Preparation of compliance programme identified measures and action plans



M&A

Pre-transaction programme reviews & related due diligence on export control matters. Postacquisition/transition support.



Impact on digitalisation

Audits on special procedures for technology transfer and technical assistance of sensitive software or technology.

Innovative technology solutions

Selecting and deploying global trade management solutions

Transactional support

Day-to-day support on export control-related questions & other compliance programme needs.



Is your company involved in cross-border transactions and has already implemented special export control procedures?

Does your company provide export control compliance training or awareness raising activities?

Is your company aware of the latest Recommendation (EU) 2019/1318 of 30 July 2019 on internal compliance programmes for dual-use trade controls under Council Regulation (EC) No 428/2009?

What corrective actions does your company undertake in case of non-compliance?

Contact us for these and more questions.



Contact

KPMG AG
Wirtschaftsprüfungsgesellschaft

Mario Urso

Partner
Head of Trade & Customs
T +49 89 9282-1998
murso@kpmg.com

Jonathan Eßer

Partner
Trade & Customs
T +49 251 59684-8983
jonathanesser@kpmg.com

Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.

www.kpmg.de

www.kpmg.de/socialmedia



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2024 KPMG AG Wirtschaftsprüfungsgesellschaft, a corporation under German law and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.