Model strategic trade control law components

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Objectives

- External constraints and commitments;
- Essentials legal components;
- Legislative and administrative articulation;
External constraints and commitments

National strategic trade control law consists in the implementation of commitments take by Government authorities within

- International legally binding treaties CWC, BWC, NPT, UNSCR 1540, 1929 (Iran),…
  Tend to universality

- International politically binding instruments : MTCR, WA, AG, NSG, Zangger Committee
  Do not tend to universality
External constraints and commitments

- **Regional** legally or politically binding instruments
  
  European Union (TEU and TFEU)

- **Bilateral** legally or politically binding instruments
  
  Euratom/US agreement for the peaceful use of nuclear energy

- **Extraterritorial effect** of third State’s legislation
  
  US deemed export, Helms-Burton Act
External constraints and commitments

National room for manoeuvre is tied by external constraints and their potential political sensitivity
Essential components of a strategic trade control law shall be:

- An **authorisation** system;
- A **verification** and control principles;
- **Sanctions**;
An authorisation system shall include

- **Authorisation principle**
  
  Including a non-proliferation principle and/or a prohibition of certain transfers?

- **Scope of implementation**

  Operations concerned: export, transit, brokering

  Definition of strategic items: dual-use items and/or conventional weapons?

  Establishment of catch-all clause provision(s)
Law essential components

Conditions of supply

- Objective elements
- No often determined by the law
- *Ad minima* two

- Ratification of certain *treaties* (NPT, CWC, BWC)

- Comprehensive safeguards agreement for nuclear items
Law essential components

Criteria of supply

- Subjective elements

- Elements to be assessed by the Licencing Authority while considering a licence application

Not necessarily comprehensive

EU Code of conduct
The trade control law shall also define:

- **Authorities** in charge of analysing licence applications and issuing denials or authorisations

**Administrative and political process**

- **Appeal procedure** in case of denial or authorisation
The law shall determine:
- Types of authorisations
  Individual, global, general
- Specific procedure to use it
  ICP requirement a specific condition for global authorisation
Verification and control principles

- Establishment of information exchange mechanisms between authorities

Consultative commission?

- Requirement of certain documents such as end-user certificate, Delivery Verification Certificate
Law essential components

Sanctions

- Effective;
- Proportionate;
- Dissuasive;

Might include penalties for operators who have breach their non-proliferation responsibility

Violation of level 2 and 3 of catch-all clause
Strategic trade control law is an element of national control regime built up by two categories of acts:

- Legislative acts
  - Revision might be lengthy
- Implementing acts or administrative acts

Therefore the law shall draft as part of one integrated system

Revision of the lists, possibility to restrain the use of certain types of licences
To conclude

National export control regime has to be understandable for operators to whom it will be applied