



Code of Export Compliance

EU-CEC

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The Code of Export Compliance: EU-CEC

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Forewords

EIFEC (European Institute for Export Compliance) is an independent not for profit membership organisation participated by public and private organisations, universities, companies and other bodies, institutions and individuals.

EIFEC is the Export Compliance international standard setting and policy-making body.

Our main aim is promoting an effective international culture of compliance with the relevant Export regulations within the financial, economic, industrial, academic and associative system of private and public sector.

EIFEC objectives are to disseminate among any Organisation involved in Export / international Trade behaviors of excellence through an effective implementation of the specialized compliance management framework based on International Export Compliance Standards (EIFEC EC1001 series).

This Code stems from the EIFEC EC1001.01:2011 CEC international Standard (Code of Export Compliance): it differs for some reference to EU jurisdiction and terminology and is intended only for easier understanding within the EU context. The global applicability of the Standard remains unchanged.

Introduction

The Code provides Organisations with an internationally accepted and easily available set of standardized principles and best practices to frame and structure the way in which they understand, govern, administer, implement, evaluate and communicate their Export Compliance.

The main values of these principles and best practices are their comprehensive coverage and the flexibility of their application and are primarily intended to be used by Organisations to develop an accountable and strategic approach to Export Compliance and understand, manage and improve their Compliance performance and risk management.

Those who adhere to this self-regulatory Code will hence find all basic principles, values, practices and international Standards useful for implementing effective specialized compliance management programs in line with EU and national Member States regulations, as well as with UN, US and all the other main international Export control systems.

This edition cancels and replaces the previous edition of December 2015. Principles and values are left unchanged but takes account both of experiences and monitoring and control activities that occurred during this time span, and of changes made during this period in legislations and practices.

This document has been developed and revised by the EIFEC Code Working Group and integrates EIFEC proprietary Standards, definitions, deliverables and ISO 19600:2014, ISO/IEC 17007:2009, ISO 31000:2018 International Standards.



Export Compliance defined¹

For the purpose of this document, the following terms and definitions apply.

“Export” means any Transaction or interaction subject to legal control in accordance with applicable jurisdiction’s definitions. It includes, in a broader sense, any “import” since each export entails an import as an indissoluble operation (trade).

“Compliance” means the act or process of being in conformity with external applicable regulations, guidelines and relevant laws, including legislative requirements to meet all the organization’s compliance obligations.

“Export Compliance” is the specialized multidisciplinary framework/discipline which covers all activities of Export (i.e. goods and services, tangible and intangible Items, transfer of means of payment), that are somehow subject to Export controlling regulations (i.e. Dual Use, Sanctions etc.) applicable to Transactions between two different states/jurisdictions/entities. It provides support to Organisations 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 legislations, codes of conduct and good practices.

“Organisations” refers to, but is not limited to, all private or public bodies, companies of any nature, associations, universities, research institutes etc. that have activities falling within the scope of this Code.

“Item” stands for “product, service, software and technology, whether tangible or intangible”.

“Transaction” encompasses virtually any kind of interaction, including but not limited to selling, purchasing, loaning, licensing, renting, quoting, returning, repairing, providing services, providing samples, visiting, meeting, training, making or receiving payment, hiring, mergers and acquisitions, accessing controlled data and collaborating in research involving controlled data.

“Internal Compliance Program”² (ICP) means, as general definition, 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 Organisations to ensure compliance with the provisions and with the terms and conditions of relevant laws.

“ECAP” (Export Compliance Administration Program) is the ICP specialized in Export Compliance with international, European and national regulations, based on EIFEC EC1001 series Export Compliance International Standards.

¹ Please refer to International Standard EIFEC EC1001.20 VOC for a complete list of definitions.

All definitions in this Code to the singular shall include the plural where applicable and viceversa. All references to gender shall include both genders and the neuter.

² ICP is a broad definition of generic compliance program used in many Guidelines and publications.

EIFEC Standards requires that a clear identifier shall be used, more appropriate and germane to the Export context, such as ECP - Export Compliance Program or else.

Accordingly, EIFEC identifier (ECAP) has a global standard use, understandable in all jurisdictions

Background

Today's global marketplace is a very competitive and complex world for Organisations to navigate.

Over the last 40 years, in fact, a long history of business and government excesses led to several legal, public and political reactions.

The response to these criminal misconducts resulted in legal sanctions, new governance practices, stricter compliance standards and, in wider terms, a general cultural transformation. All that has deeply shaped the way Organisations do their business, pushing them to set up or strengthen proper Export Risk Management programs.

EU Governments³ rely on the due diligence of exporters to help ensure security and compliance with laws, but in this global integrated world an efficient Export Compliance needs cooperation and harmonization at both a European and international level.

Alarms regarding potential diversion of dual-use items (i.e. those products that have a commercial application but can also be of military, weapons-of-mass-destruction or terrorist use) have heightened, while sanctions and embargoes violations increased the risk areas of Export thus jeopardizing both nations' and mankind's safety (Human Security).

Without a proper Due Diligence, all these threats to peace and security are possible by circumventing Anti Money Laundering (AML) and Countering the Financing of Terrorism (CFT) regulations.

All these risks can be prevented most effectively just through strong public/private sector partnerships and cooperation

³ In general, any controlling jurisdiction



The Framework for Export Compliance

Given the complexity of the overall external context (Organisations have to comply with many regulatory requirements, such as export controlling legislation, customs procedures, tax and contract laws, transport regulations etc.), Organisations in all industries are required to implement an Export compliance program, and the recommendations herein should be applied to all subjects dealing with Export-related activities.

Export Compliance is the specialized Risk management framework⁴ that supports operational governance compliance with regulatory requirements and Organisations' own policies for international trade.

Monitoring and maintaining Export Compliance is not just to keep the regulators happy, but it is the most important procedure for any Organisation to avoid or mitigate potential legal civil and criminal proceedings, fines, penalties and imprisonment, to preserve its ethical health, support its long-term prosperity, protect the good name (reputation) of the Organisation and foster its values.

The EU Commission has set strategic priorities in the field of Export Controls ("EU Export Control Policy Review"), where is stated that Compliance efforts should be recognized through the facilitation of control and fast-track Export processes by setting clear private sector compliance standards for the use of simplified mechanisms as a substantial privilege granted to reliable exporters.

To be deemed "reliable", the Organisation shall guarantee a steady compliance with the law, implementing a suitable Export Compliance program by setting up consistent organisational and workflow structures, operating procedures, general awareness raising, chain of responsibility, regular audits etc. which can ensure observance of all restrictions, licensing prerequisites and other main duties.

An efficient Export compliance program will also improve operational effectiveness and avoid unnecessary work and the related waste of working time.

⁴ EIFEC standards on Export Compliance management system require that compliance and risk management should operate together, as "team-mates" sharing a common framework with some minor variances for their differences, in line with ISO and EIFEC standards evolution..

Moreover, compliance and competitiveness are mutually reinforcing, as compliance can prevent the Organisation from just entering a business when the Export is fully forbidden or impossible due to licensing restrictions and minimize the risk of inadvertent supply of dual-use items to entities of concern and violation of sanctions and embargo regimes

On a more practical level, ECAP supports the Organisation's business objectives, identifies the limits of legal and ethical behaviour, and establishes a system to warn management when the Organisation is getting close to (or even crossing) a boundary or approaching an obstacle that prevents the accomplishment of an Organisation's purpose.

Once issues are identified, management shall be prepared to respond quickly and appropriately to minimize the impact on the Organisation (and its stakeholders, as appropriate); subsequently, it should constantly improve its Export Compliance and ethics programs, in order to be able to better prevent, detect and respond to similar misfeasance and/or malfeasance in the future.

Promotion of convergence with Customs' "trusted operators" program (AEO - Authorized Economic Operator) and equivalent programs applicable in other jurisdictions, or Export Compliance Certified Organisations program⁵, can reduce duplication of controls and offer cost-effective procedures for both operators and Administrations

⁵ EIFEC International Standard EC1001:2011 series EU-C/ECO Export Compliance management system



Export Compliance: Principles Standards⁶

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 Organisations act and communicate in a transparent manner in their relation with any relevant jurisdiction public Authority, 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 Organisations act in conformity and compliance with all applicable regulations as well as rules and laws of States or jurisdictions where business and activity and Export have place. (**Commitment to Export Compliance**)

Accountability

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

Consistency

All Organisations act consistently with prior obligations and commitments. Organisations must be consistent in applying the Export Compliance principles, methods, practices, and procedures.

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

Effectiveness

All Organisations undertake to use all its available means, including labour, financial resources, and goods and services either received or created, in such a way as to pursue the Organisation’s Export Compliance purposes to the highest degree possible.

⁶ International Standard EIFEC EC1001.00:2011 ECPS

Code of Practice

Organisations adopting this Code aim to implement the Principles given above; they will therefore develop, adopt and put into operation Export Compliance policies and procedures that uniquely address their specific requirements (Unicuique suum Principle or Appropriateness).

Organisations shall decide which Export Compliance measures are appropriate and tailored to the nature of their Export activities, since several factors, such as Organisation's size, end-use and sensitivity of products, geographic location of business and customers, relationships with business partners, volume of trades, product restrictions and complexity of national export procedures, actually influence how an Organisation structures its operational activity (External and Internal Context)⁷ .

However, there are certain key elements that are recommended to all, because they function as a foundation for the accountability of any Organisation.

By establishing the best Export Compliance practices from the beginning, each Organisation will have a program that evolves and grows along with the business, and is able 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. They are the foundations of this Code.

⁷ The environment in which the Organisation seeks to define and achieve its objectives (ISO)

10 Export Compliance Key Elements

1. Management Commitment to Compliance

Organisation Top Management shall make a firm, strong commitment to comply with the letter and spirit of applicable laws.

In order to ensure adherence to export laws and regulations, foster and nurture a widespread Organisation culture of compliance, the Top Management shall actively:

- prepare and adopt formally an Export Compliance Commitment Statement – which shall be written, clear and concise, formatted consistently with other management policy statements;
- widely circulate the Export Compliance Commitment Statement to the attention of all employees involved in Export activity in any form suitable for the Organisation, conveying the authority of the Chairman, Chief or other Decision Makers and giving clear indication of the Export Compliance policy of the Organisation (internal context);
- communicate the Statement to all parties concerned (contractors, consultants, interns, freight forwarders, distributors, sales representatives, joint venture partners and any other stakeholder directly or indirectly involved in the Export activity) and promote it as an essential condition to do business with the Organisation (external context);
- pledge adequate (human, technical and financial) resources to develop, implement and maintain the Export Compliance program, as well as evaluate and ensure ECAP effectiveness;
- ensure that appropriate organisational officials (either internal or external) are designated with the responsibility for the Export Compliance Program (Roles and Responsibilities);
- promote a real and permanent connection between the Organisation's core values and the Export Compliance Program.

2. Appointment of the person in charge

Each Organisation shall appoint its own Export Compliance Officer (ECOF), who is responsible for compliance issues. Selecting the ECOF among its own staff should be the most natural solution. Where necessary, however, duties relating to Export Compliance may be delegated to an external Export Compliance Officer, but even so an internal register, recording all responsibilities related to each stage of Export Compliance, shall be maintained and updated as necessary.

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3. Export Compliance Administration Program

Organisations shall draw up and operate a set of formal written compliance policies and procedures (ECAP) that have to be effective for the business concerned, reflect as far as possible the best practices illustrated in this Code and provide sufficient safeguards at each key step in the Export process management.

4. Risk Assessment and Treatment

Organisations shall identify vulnerabilities in their Transaction process in order to prevent risks of export laws violations .

First of all, Organisations shall chart the flow of their Export process to capture it in a comprehensive, detailed manner and define step-by-step procedures for daily operational and organisational implementation by employees that will be involved in the Export activity.

Charting the process should start where the Transaction begins (i.e. receipt of order), follow it all the way through, up to completion, and identify each action and decision point.

According to this process flow-chart, the person(s) in charge of managing each different step shall be clearly identified.

Key steps of Risk Assessment and Treatment are

Process design:

- prepare the Flow Chart of the Export / trade / Transactions process;
- detect the vulnerabilities to determine the risk of Export laws violation;
- define the screenings to handle the vulnerabilities;
- determine the frequency of checks to be performed throughout the flow process;
- determine “stop,” “hold” and/or “cancel” criteria to prevent Transactions from moving forward when checks fail;
- determine “release” criteria for Transactions that have been stopped and submitted to further review.

Key procedures:

- classification of all Items that can be exported, in order to establish if they are subject to any restriction as for export law (Item Risk);
- export Authorization determination: determine if Items require a license/authorization, by evaluating Jurisdiction and Classification (i.e. nature of goods/services, customers and final destinations); determination should be supported using an Item and Country Decision Table (ICDT), to be prepared, developed and maintained. Organisation must verify the license application process/mechanism;
- screening of all third parties involved in any Transaction, so to prevent the Organisation from doing business with prohibited/restricted entities, by using an appropriate screening tool/process (Customer / Third Party Risk);
- tracing of the paths of all document files that form the entire Transaction story and their (physical and/or digital) location;
- physical and information security.

5. Information and Training

Export regulations and laws often change, and products and their end-uses are continually evolving; procedures shall be put in place for acquiring details of changes/updates made in legislation and disseminating them to relevant personnel.

Training and competence needs of staff in relation to Export Compliance shall be assessed and fulfilled.

Education and training activities shall be documented and retained.

A knowledge-base will be created and updated on a regular basis. It shall include a reference list of sources of information and contacts for advice.

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

6. Record Keeping

Organisations shall maintain records of all managed activities covered by export legislation for at least the minimum period required by law.

Organisations shall establish a policy about time, mode, place and safeguards for maintaining and storing records.

Organisations shall designate staff and allocate responsibilities for record keeping.

All procedures shall be documented.

7. Audit

Organisations shall protect the integrity of ECAP by verifying that operational compliance procedures within all the Organisation Export-related divisions and locations reflect the written compliance procedures and are consistent with current export regulations.

In order to identify and resolve inconsistencies between written and operational procedures, Organisations shall conduct at planned intervals internal audits of the Export Compliance program, to maintain reference standards set in compliance Procedures.

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

Undergoing regular independent certification by internationally accredited bodies according to Export Compliance system Certification (based on EIFEC International Standard EC1001 series) enhances a strong effect of external credibility and Compliance performance.

8. Handling Non Compliance Issues

Corrective and disciplinary actions shall be planned for cases of non-compliance with company policies and procedures, or incidents contrary to export laws.

In case of doubt about a suspicious order, Organisations should consult Export Compliance experts and, by notifying their suspicions to National authorities, can obtain advice and guidance in the light of the more comprehensive information available.

Organisations shall establish a policy to handle non-compliance issues.

The policy shall include – inter alia – provisions for:

- taking action for control and correction;
- evaluating and implementing actions to eliminate the root causes of non-compliance issues;
- reviewing the effectiveness of action taken;
- making changes to the Export Compliance management system, if necessary;
- exchanging information with the relevant authorities (e.g. notifying suspicious Transaction requests, forwarding voluntary declarations etc.).

All employees shall know their specific responsibilities and how they can help their Organisation to identify suspicious requests and orders.

They need to be well informed on indicators of possible Export laws violation and procedures shall be set up to provide them with clear guidance concerning what actions they shall take in the event of suspected incidents of Export-related noncompliance.

The Top Management shall also foster a safe environment for employees who raise questions or concerns about compliance, and make sure that they are and remain as independent as possible, protecting the whole Export Compliance staff, as far as possible, from any conflict of interests.

9. Maintain your Export Compliance Manual

The Organisation shall collect and organise all drawn up operational and organisational policies and procedures into a formal written Export Compliance manual.

Depending on the size of the Organisation and the extent of its Export business, the written manual could range from a few to a lot of pages, but it has to be anyway relevant to the Organisation, easy to understand and well-known by all employees.

In order to be properly maintained, the manual shall be reviewed periodically (at least once a year) to ensure it is always kept up-to-date, and considering that many changes in the Organisation or in the Export regulations may require its revisions even before the periodic review timetable (Continual improvement).

10. Integration with Quality Management practices

Organisations shall ensure that:

- all procedures and practices for the management of Export Compliance regulations are integrated with any corporate Quality Management system applicable to them;
- within Quality Management practices, Export Compliance procedures are treated in the same manner and with equal importance as other organisational procedures;
- the Export Compliance Program supports convergence and integration with any AEO (Authorised Economic Operator) programs, as appropriate to the complexity of the Organisation.

Glossary

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 Organisations

CEEC

Acronym for Coalition for Excellence in Export Compliance, a voluntary group of experienced export compliance professionals and organisations that offers “Best Practices” standards for export compliance programs.

Consistency

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

Effectiveness

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

EIFEC

Acronym for the European Institute for Export Compliance.

EIFEC Number ERN[®]

ID number of a Certified Organisation attributed for the purpose of identifying Organisations or persons in order to ensure their traceability on an EU level.

EIFEC Product Number EPN[®]

ID number of an ECP Certified Product attributed in order to ensure its traceability on an EU level.

EIFEC Standards

Principles-based voluntary 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. Voluntary standards do not replace national laws, with which standards users are assumed to comply and which take precedence (ISO expression).

EU

Acronym for European Union referred also, but not limited, geographically or economically.

EU Directive

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

Legislative act of the European Union that becomes immediately enforceable as law in all member states at the same time.

EU-CEC[®]

Acronym for Code of Export Compliance / EU.

EU-C/ECO[®]

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-C/ECOP for individuals; EU-C/ECOF for Compliance Officer.

**ECAP**[©]

Acronym for Export Compliance Administration Program based on EIFEC EC1001 series Export Compliance International Standards.

ECGL[©]

Acronym for EU Export Compliance Guidelines based EIFEC EC1001 series Standards.

ECP[©]

Acronym for Export Compliance Product certification 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[©]

Acronym for EU Export Compliance Register, including all officially registered Organisations and individuals engaged in EU export activities.

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.

Export Compliance is inclusive of 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 tied to transactions between two different states/ jurisdictions.

Transparency

Principle of being transparent according to EU frameworks

Item

Includes “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 falling within the scope of this 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, mergers and acquisitions, 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)

This Code is presented in a form suitable for use by conformity assessment bodies, accreditation bodies and other interested parties, whether governmental or non-governmental, at international, regional, national or sub-national levels. This Code is intended to be used in conjunction with EIFEC International Standards or Guides relating to conformity assessment when preparing the Export Compliance management system certification.



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