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EU Export Control Reform

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Export Control of Dogs to Israel: Dual-Use Items under EU Law



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On 9 February, the Dutch Minister for Foreign Trade and Development Cooperation wrote to the Dutch Parliament a [letter](#) on “export controls on dogs”. In her letter, the Minister informed the Dutch Parliament that there is no existing legal basis for restricting dogs to be exported to Israel. What are the “export controls of dogs” all about?

Dutch-bred dogs against Palestinians

The Minister’s letter is in response to the ongoing controversy in the Netherlands regarding the export to Israel of so-called “service dogs” which are bred in the Netherlands. On 26 October last year, NRC Handelsblad, a Dutch national newspaper, [reported](#) that the Israeli army has been using the Dutch-bred dogs against Palestinians in the occupied territories. According to the same news article, a Dutch breeder company, Four Winds K9, has been supplying dogs to the Israeli army for more than 23 years. The exact number of exported dogs is unknown, inasmuch as the export control regime does not distinguish service dogs from any other animals. An [on-line petition](#) was submitted this month to the Dutch government to halt the export of attack dogs to Israel.

Source: <http://blog.renforce.eu/index.php/en/>

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Introduction

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Context EU Export Control Reform

- ❑ COM(2016) 616 final - <http://trade.ec.europa.eu/doclib/events/index.cfm?id=1562>
- ❑ Modernisation of EU dual-use controls
- ❑ Adaption to rapidly changing technological, economic and political circumstances
- ❑ Protection of Human Rights globally
- ❑ Reduce administrative burden by making EU Law simpler and less costly

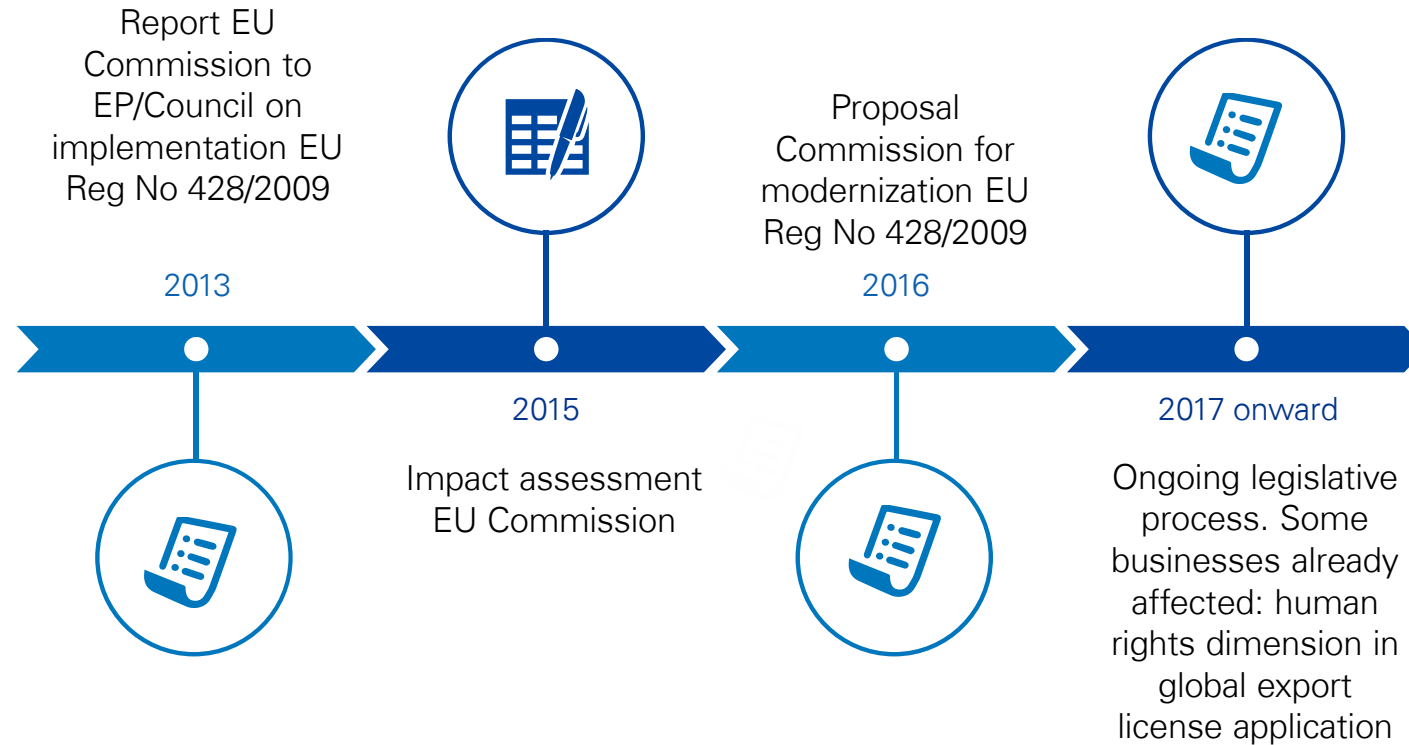


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Timeline EU Export Controls Reform

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Timeline modernisation EU Reg No 428/2009





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Key Elements Proposal

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Proposal for EU Export Control Reform – Building Blocks

- I. Modernisation of existing control provisions
- II. Optimisation of EU licensing architecture
- III. Convergence of catch-all controls
- IV. Re-evaluation of intra-EU transfers
- V. An initiative to control exports of cyber-surveillance technologies
- VI. Enhanced cooperation on implementation and enforcement
- VII. Transparency and outreach – private sector partnership
- VIII. Export control dialogue with third countries



I. Modernisation of existing control provisions

- ❑ **Expansion definition “dual-use” items (Art. 2(1))** – Cyber-surveillance systems also controlled (e.g. mobile telecommunication interception equipment, intrusion software (new D-U Category 10))
- ❑ **“export” definition amended (Art. 2(2))** – transit goods no longer excluded from export control?
- ❑ **“export” definition amended (Art. 2(2))** – OPR goods under export control

II. Optimisation of EU licensing structure

- ❑ **Harmonisation of licensing process (Art. 10)** – common licensing parameters (e.g. validity period), conditions for use of EUGEAs (registration, reporting requirements) and global license (“effective internal compliance program”)

- ❑ **Global export license for “large projects” (Art. 10)** – one single license for all export operations

- ❑ **NEW EUGEAs (Art. 10)**
 - Low Value Shipments - < EUR 5k (EUGEA007)
 - Intercompany transmission of software and technology (EUGEA008)
 - Encryption (EUGEA009)

III. Convergence of catch-all controls

- ❑ **Expansion definition “catch-all” (Art. 4(1))** – “An authorization shall be required for the export of dual-use items not listed in Annex I if (...)”:

<input type="checkbox"/> new
(b) for a military end-use if the purchasing country or country of destination is subject to an arms embargo;
<input type="checkbox"/> new
(d) for use by persons complicit in or responsible for directing or committing serious violations of human rights or international humanitarian law in situations of armed conflict or internal repression in the country of final destination, as identified by relevant public international institutions, or European or national competent authorities, and where there is evidence of the use of this or similar items for directing or implementing such serious violations by the proposed end-user;
(e) for use in connection with acts of terrorism.

- ❑ **Obligation to exercise due diligence (Art. 4(2))**



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Human Security Dimension

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I. Global Export License for Cat 4/5 products

- ❑ **Export from The Netherlands to USA, Argentina, Japan and Turkey of Cat 4/5 products** – request for global export license to CDIU
- ❑ **Special policy Dutch Ministry of Foreign Affairs** – Destinations excluded from standard global license
- ❑ **“Countries of concern” (as per October 2016; dynamic list)** – Afghanistan, Belarus, occupied Palestinian territory, Central African Republic, Democratic Republic Congo, Egypt, Guinea Conakry, Guinea Bissau Eritrea, Haiti, Iraq, Iran, Yemen, Libya, Lebanon, Myanmar, North-Korea, Ukraine, Pakistan, Russia, Saudi-Arabia, Sudan, Somalia, Syria, Turkey, South-Sudan, Zimbabwe
- ❑ **Additional requirements – Internal Compliance Program (ICP)**

I. Global Export License for Cat 4/5 products (continued)

□ Additional requirements for a global license:

1. Not for military end-use
2. Not for products, software, technology related to crypto analysis
3. Not to be used if exporter is aware that products are used for human rights violations purposes
4. Exporter must implement safeguards for requirement nr. 3
5. End-Use Statement from every new customer
6. Bi-annual reporting on deliveries
7. No use of free zones in non-EU countries
8. No shipments to military entities, intelligence services, police authorities and other law enforcement authorities

I. Global Export License for Cat 4/5 products (continued)

□ 'Human Rights' suggestions for ICP:

- a. The **company's values** in relation to Human Rights
- b. If and how the items supplied can be used in **human rights violations** or – on the contrary – can protect against human rights violations, for example by encrypting certain data
- c. A clear **awareness** in relation to certain regions, which countries require additional checks and the fact that there are continuous developments in this area
- d. Special attention in relation to supplies to certain **governments** (in particular police forces, the military, intelligence- and security services) and supplies to telecom providers and/or data storage providers that may be required to cooperate with human rights violations
- e. **Additional procedures** to ensure that items cannot be used for the stated purposes (e.g. end-user statements)
- f. Awareness and training on Human Rights developments
- g. When additional information should be requested from the competent authorities

□ Publicly available information on Human Rights:

- Guiding Principles on Business and Human Rights (UN, 2011)
- ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights (EU Commission, 2013)
- Digital Agenda for Europe
- NGOs (Freedom House, Privacy International)



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Business impact

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Key business areas



EU Export Control Reform - Some items to consider



What questions do YOU have?



Why KPMG?



WE HAVE LOCAL AND
INTERNATIONAL EXPORT
CONTROL KNOWLEDGE



WE HAVE ALREADY ASSISTED
WITH KEY ELEMENTS OF THE
EU EXPORT CONTROL REFORM



WE WILL MAKE SURE
THAT YOU ARE READY!



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