

Administrative Enforcement Study



Trevor Wood
Interexport Management Systems Ltd

Administrative Enforcement Study

Aim of the Study

To determine practice on applying administrative penalties for violations of the EU Dual Use Goods Regulation

Regulation 1334/2000 requires 'appropriate measures to ensure proper enforcement'. It is left to Member States to implement this.

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- Study looked at 11 out of the 25 Member States.
- Data gathering exercise was split into two phases - information was initially collected from relevant government website or by contacting the relevant Member State.
- Second phase involved scenarios under which administrative penalties could be applied.

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Methodology

- Certain categories of information were researched during the first phase such as:
 - Legislation;
 - Authority responsible for imposing Administrative Enforcement;
 - Aggravating and Mitigating factors
 - Administrative penalties
 - Evidence of actual practice
 - Level of fines

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Findings – First Phase

Findings include:

- Legislation
- 9 out of 11 countries had some form of Administrative Enforcement
- Legal instruments ranged from Customs legislation, Administrative legislation or in a Criminal Code.

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Findings – First Phase

- Four main forms of Administrative Penalties are in use:
 - Warning Letters
 - Fines
 - Confiscation of Goods
 - Revocation of Licences

- Application of these penalties varies between Member States

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Findings – First Phase

Level of fines

- Some MS use a formula basis to calculate fines
- Others have a maximum fine for each offence
- Lowest is Estonia at €3,200
- Highest is Germany at €1M
- Only the UK publish a formula on how to calculate a fine for restitution of goods. Most other MS give the Authority imposing the fine discretionary powers.

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Findings – First Phase

- Criminal vs Administrative penalties
- Dividing line is applied differently in MS.
- Some approaches are:
 - Would a licence have been issued?
 - What was the intent of the exporter?
 - What was the strategic importance of the export?

Administrative Enforcement Study Methodology – Second Phase

Evidence of actual practice

- Study showed that none of the 11 Member States surveyed published information on administrative penalties applied.
- Some cited problems with data protection legislation.
- Second part of the study was to have been a study of actual practice. Instead, a range of scenarios were generated and Authorities asked how they would deal with each case.

Administrative Enforcement Study Analysis

- There is no overall unified approach to the implementation of Administrative Enforcement but some similar trends are emerging.
- Out of 11 MS, 9 apply Administrative enforcement and the other 2 are considering imposing similar enforcement measures.

Administrative Enforcement Study Analysis

- Range of different instruments used to apply Administrative enforcement including warning letters, fines, restitution penalties and revocation of licences.
- Only 1 MS publishes details of how penalties are calculated
- No EU MS publishes details of administrative penalties applied to exporters.

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Conclusions

- To encourage companies to comply with export control regulations, a clear statement of the penalties and how they are calculated would aid transparency.
- Publication of penalties applied to exporters who contravene the law could also help to encourage compliance. It is accepted that data protection law will need to be observed prior to any such publication.