

# **Transformation of the EU Policy in the Field of Export Control of Military and Dual-Use Goods**

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## **Abstract**

The article presents a comprehensive analysis of the evolution of the European Union's export control system, with a particular focus on the transition from the 1998 Code of Conduct on Arms Exports to the Council Common Position 2008/944/CFSP, which marked a qualitative transformation of the financial, legal, and institutional foundations of international arms transfer regulation. It is demonstrated that the shift from a declarative model of political coordination to a normatively codified system with clear reporting mechanisms, instruments of mutual information exchange, and transparency tools not only enhanced the effectiveness of risk management but also strengthened the EU's role as a global leader in arms control.

The specifics of the Common Position's implementation are examined, in particular the practice of mutual information sharing on license denials and the institutionalization of transparency mechanisms, which has ensured a higher level of political and legal accountability of the member states. Special attention is devoted to the integration of European export control into global non-proliferation regimes and security architectures (such as the Wassenaar Arrangement and the Missile Technology Control Regime), which has consolidated the EU's authority as one of the leading actors of global governance. Based on a systematic analysis, the article substantiates the potential for adapting the European experience to improve Ukraine's export control system, particularly through the introduction of effective mechanisms of transparency, institutional coordination, and standardization of licensing and denial procedures.

It is argued that the adoption of European practices will contribute to strengthening Ukraine's capacity in safeguarding national security, harmonizing with international standards, and enhancing the country's credibility as a reliable partner in the field of military-technical cooperation. The novelty of the research lies in combining an institutional and financial-legal analysis of the transformation of the European export control model with an assessment of the prospects for its implementation under Ukrainian conditions. The practical significance of the study consists in developing recommendations for modernizing the domestic regulatory and institutional framework by drawing on the best European practices.

**Keywords:** international relations; export control; European Union; arms trade regulation; transparency in arms transfers; non-proliferation; security governance.

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## 1. Introduction

In the contemporary context of increasing technological interdependence among states, the regulation of trade in military and dual-use goods is gaining particular significance, as their uncontrolled movement may pose threats to security at both national and regional levels. For this reason, the European Union's system of export control requirements serves as a key instrument of stability, establishing a comprehensive framework of rules, procedures, and criteria that regulate the scope, direction, and conditions of cross-border transfers of strategic goods, while ensuring a harmonized approach among member states. This harmonization aims to minimize risks of legal and political discrepancies, prevent the uncontrolled proliferation of sensitive military technologies, ensure coordinated fulfilment of collective security obligations, and align EU policies with international arms control regimes and global norms of international law.

Under conditions of hybrid threats and armed conflicts involving advanced technologies, the issue of export control of military and dual-use goods goes beyond purely economic or technical considerations, becoming a strategic factor in safeguarding international and European security. In this context, an analysis of the transformation of EU policy in the field of export control allows for an assessment of its capacity to adapt to global challenges, as well as the formulation of recommendations for strengthening the regulatory foundations of export control both within the Union and in cooperation with international partners.

## 2. Literature review

The issue of export control within the European Union has attracted considerable attention in both legal and political research. An important source in this regard is represented by EU legal acts, in particular Regulation (EC) No 428/2009 [1], which established the framework for the control of exports, transfers, brokering, and transit of dual-use goods, as well as its revised version – Regulation (EU) 2021/821 [2]. The latter significantly broadened the scope of control, incorporated new provisions on cybersecurity, and strengthened coordination mechanisms at the level of the member states. These documents constitute the legal foundation for the unification of national regimes and the development of a common policy in this field.

Among scholarly literature, particular prominence is given to studies analysing the institutional architecture of EU export control. For instance, the works of I. Anthony and S. Bauer examine the role of the EU as a global actor in global non-proliferation efforts, as well as challenges associated with harmonizing national export control regimes [3]. Research conducted by C. Stalenhoef, M. Kanetake, and M. Wende focuses on the interconnection between export control and international non-proliferation regimes, highlighting limitations in monitoring mechanisms and the divergent approaches adopted by member states [4].

A distinct body of sources is devoted to analysing the evolution of European policy in the field of military goods control. In the works of M. Bromley, one can trace the transition from intergovernmental coordination (in particular, the 1998 EU Code of Conduct on Arms Exports) to a more institutionalized model, enshrined in Council Common Position 2008/944/CFSP and subsequent EU regulations [5]. Equally important are the studies of scholars who analyse the prospects for adapting the European experience in Ukraine. The works of H. Alavi and T. Khamichonak examine the challenges of implementing European export control standards into national legislation, as well as the risks such processes pose for security policy [6].

In contemporary publications, increasing attention is devoted to the impact of emerging technologies and hybrid threats on the export control system. For example, the works of R. August, D. Mayer, and M. Bixby emphasize the complexity of regulating trade in dual-use goods and technologies in the fields of cybersecurity, artificial intelligence, and biotechnology. They underscore that the EU's regulatory framework is undergoing continuous transformation in order to meet the challenges of rapid technological evolution [7].

Overall, the analysis of the literature demonstrates that European export control policy has evolved from fragmented intergovernmental coordination to the development of a comprehensive institutional and regulatory system. At the same time, scholarly works note the persistence of a number of challenges – ranging from divergent practices of rule implementation among member states to the need to adapt mechanisms to the latest technological developments.

## 3. Identification of previously unresolved questions and formulation of study hypotheses

Despite the existence of a substantial body of research addressing the legal and institutional foundations of the EU's export control policy, a number of aspects remain insufficiently explored. In particular, the impact of new geopolitical challenges on the transformation of the EU export control regime requires deeper examination. Equally pressing is the issue of harmonizing the practices of EU member states, which often display varying levels of institutional capacity and political will in fulfilling their common commitments. Another important avenue of inquiry concerns the relationship between EU export policy, international arms control regimes, and the mechanisms through which these regimes are incorporated into the Union's legal framework.

Against this backdrop, the article advances the hypothesis that the transformation of EU policy on the export control of military and dual-use goods is shaped by the interplay of geopolitical threats and technological innovations, and is directed toward achieving a balance between collective security and economic competitiveness. The effectiveness of such policy, however, depends directly on the degree of unification of national practices among the member states, the alignment with international arms control regimes, and the Union's readiness to integrate partner countries into its common legal space.

#### **4. Purpose, objectives and methods of the study**

The aim of the study is to provide a theoretical and methodological substantiation and a comprehensive analysis of the transformation of the European Union's policy in the field of export control of military and dual-use goods, taking into account geopolitical challenges, technological innovations, and international arms control regimes, as well as to develop scientifically grounded recommendations for improving the institutional and legal foundations of this system's functioning.

Within this aim, the following key objectives are defined: to trace the evolution of the EU's legal framework for export control from intergovernmental declarations to the establishment of a coherent legal system; to examine the institutional architecture and implementation mechanisms of the EU's common policy in the sphere of military-technical transfers; to analyse the impact of geopolitical threats and technological factors on the transformation of EU export control policy; to assess the interrelation of EU policy with international non-proliferation and arms control regimes; to identify the challenges of unifying national practices of the member states and to outline directions for the harmonization of licensing procedures; and to substantiate the prospects for adapting the European experience to strengthen Ukraine's national export control system.

The methodological framework of the research rests upon a systemic and interdisciplinary approach, combining historical-legal analysis for examining the evolution of EU legal norms and regulations; institutional analysis for studying the architecture of bodies, procedures, and coordination mechanisms in the field of export control; the comparative-legal method for juxtaposing EU policy with international arms control regimes and national practices; and analytical methods for evaluating the effectiveness of control mechanisms and for developing practical recommendations.

#### **5. Results and discussions**

In the context of the growing relevance of export control of military goods and technologies, the European Union has developed a comprehensive legal framework based on jointly defined criteria, established by the European Council decisions in Luxembourg (1991) and Lisbon (1992). A significant milestone in this process was the adoption by the EU Council in 1998 of the *EU Code of Conduct on Arms Exports* [8], which laid the institutional foundations of a common policy in the field of international transfers of military equipment. The Code defined minimum standards for regulating arms exports and introduced the practice of transparent information exchange among the member states. The implementation of this instrument contributed not only to strengthening mutual trust between national control authorities but also to harmonizing export licensing procedures and shaping a common approach to assessing the risks of military technology proliferation in crisis-prone and unstable regions. This, in turn, became an important step in building a shared European security system.

The primary rationale behind the establishment of export control within the European Union lies in the prevention of the uncontrolled transfer of military goods and dual-use technologies that could be employed by recipient countries for internal repression, acts of international aggression, or the destabilization of regional and global security. In this context, EU member states acted as initiators of a regulatory regime governing the circulation of military technologies, assuming enhanced responsibility for compliance with international arms control obligations. The declared commitment to the unification of national regulatory standards, the harmonization of licensing procedures, and the institutionalization of transparency in the sphere of military-technical transfers has served not only as evidence of the member states' political will, but also as a reflection of the EU's strategic orientation toward strengthening its role as a guarantor of stability within the European and global security architecture [9].

The development of the European Union's Common Foreign and Security Policy (CFSP) has led to the adoption of a number of specialized legal instruments, among which two stand out as particularly significant: Council Joint Action 2002/589/CFSP, aimed at countering the destabilizing accumulation of small arms (2002) [10], and Council Common Position 2003/468/CFSP, which regulates brokering activities in the arms trade (2003) [11]. These instruments institutionalized control mechanisms not only over the direct export of military goods, but also over indirect transactions that could be used to circumvent national and EU-wide export control regimes.

A pivotal milestone in the development of the European Union's institutional export control system was the adoption of the EU Strategy against the Proliferation of Weapons of Mass Destruction (2003) [12]. This strategic document significantly strengthened the EU's normative and political capacity in the domain of security governance. It also underscored the Union's commitment to a comprehensive and integrated approach, combining foreign policy and security instruments within a unified framework of collective European policy on the export control of military and dual-use items.

In parallel with the development of intra-European regulatory mechanisms, the European Union actively engaged in the implementation of international arms control regimes. A particularly important direction was its participation in the implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, which envisaged the strengthening of institutional measures to prevent illicit transfers and ensure proper reporting on arms movements [13]. Additionally, the EU supported the functioning of the United Nations Register of Conventional Arms (UNROCA), established in 1992, which became the first global transparency instrument in the field of arms trade [14].

The inclusion of the EU Member States in this mechanism signified the integration of regional initiatives into a broader international context and the formation of shared responsibility in the field of global security. The participation of the European Union in relevant international programmes became a factor not only in the harmonisation of European and global practices of export control but also in creating a foundation for the further alignment of EU policies with established international standards in the field of arms control. Such an approach significantly enhanced the legitimacy of the EU as an actor of global governance

in this sphere while simultaneously providing additional safeguards against the destabilising accumulation of military resources in crisis regions of the world.

A key stage in the institutionalisation of the European policy on export control was the adoption in 2008 of the Council Common Position 2008/944/CFSP [9], which conferred binding legal force on the provisions of the earlier Code of Conduct on Arms Exports (1998) [8], thereby transforming them from the level of political declarations into a set of norms of European law. This document established uniform licensing procedures for all Member States, defined the criteria for the assessment of export licence applications, and introduced the Common Military List of the European Union [15], which became the official reference framework for determining the categories of products subject to export control (see Table 1).

Table 1

Evolution of EU Arms Export Control Mechanisms: from the EU Code of Conduct to the Council Common Position 2008/944/CFSP

<b>Comparison criterion</b>	<b>EU Code of Conduct on Arms Exports</b>	<b>Council Common Position 2008/944/CFSP</b>	<b>Key innovations and significance</b>
<b>Legal status</b>	Political commitment (non-binding, declarative in nature)	EU legal act, binding on all Member States	Transition from declarative guidelines to a legally binding control system
<b>Regulatory scope</b>	General principles of responsible arms exports	Clearly established rules and obligations for states when granting export licences	Expansion of scope: from political coordination to legal regulation
<b>Export assessment criteria</b>	8 criteria (human rights, international stability, risk of misuse of arms) – declarative	The same 8 criteria, but with a legally binding obligation to comply	Formalisation of the mechanism: each licence must be assessed against established criteria
<b>List of items</b>	Indicative, without unified systematisation	Single Official EU Military List (22 categories)	Institutionalisation of the European Military List as a reference framework
<b>Reporting procedures</b>	Voluntary notification of licence denials	Mandatory reporting and annual collective EU reports	Introduction of transparency and mutual information-sharing
<b>Role of national governments</b>	Predominant autonomy of states in licensing decisions	Compliance with common rules and mandatory mutual consultations	Reduction of risks associated with «jurisdiction shopping» in arms sales
<b>International dimension</b>	Orientation towards political coherence within the EU	Synchronisation with the Wassenaar Arrangement and the Arms Trade Treaty (ATT)	Strengthening the EU's global legitimacy and influence in the field of export control

Source: based on [8, 9]

The transition from the EU Code of Conduct on Arms Exports (1998) to the Council Common Position 2008/944/CFSP (2008) represented a qualitative transformation of the financial-legal and institutional architecture of export control in the European Union: from a declarative mechanism of political trust to a normatively regulated system with clearly defined procedures, institutional instruments, and integration into international regimes. This shift enhanced not only the effectiveness of managing risks associated with international transfers of military technology, but also strengthened the role of the EU as a global leader in the field of arms control.

The Council Common Position 2008/944/CFSP, *inter alia*, introduced a mechanism for regular reporting by Member States, institutionalised the practice of mutual information-sharing on licence denials, and established stricter requirements for transparency, thereby raising the level of both political and legal accountability in the field of international military transfers. In this way, the European Union moved from a model of purely political coordination towards the creation of a comprehensive legal system of export control, which not only aligns with global non-proliferation and arms control regimes (in particular, the Wassenaar Arrangement [16] and the Missile Technology Control Regime (MTCR) [17]), but also reinforces the EU's authority as one of the leading actors of international governance in the sphere of security policy.

For Ukraine, which finds itself in the conditions of a large-scale war while simultaneously integrating into the international security space, the adaptation of the EU's experience in the field of export control of military and dual-use goods is of crucial importance for building an effective and transparent national export control system, capable of ensuring a balance between the state's military-economic needs and compliance with international obligations (see Table 2).

Table 2

Possibilities for Adapting the European Experience of Export Control to Ukraine

Key element of the European model	Essence in EU practice	Possibilities for adaptation in Ukraine
<b>Legal and regulatory framework</b>	The Council Common Position 2008/944/CFSP established a legally binding mechanism with clear procedures and criteria	Improvement of national legislation with an emphasis on the legal enforceability of export control norms
<b>Institutional coordination</b>	Cooperation of Member States through the European Council and working groups on arms exports	Establishment of a permanent inter-agency coordination body with extended powers
<b>Transparency and reporting</b>	Annual national reports and mutual notification of licence denials	Introduction of a system of open reporting and internal data-sharing between state authorities
<b>Mechanism of licence denials</b>	Institutionalised practice of mutual information-sharing to prevent «licence shopping»	Creation of a register of denials accessible to all relevant institutions
<b>Integration into global regimes</b>	Linkage with the Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), and other international regimes	Deepening Ukraine's participation in international arms control regimes
<b>Accountability and oversight</b>	Enhanced political and legal responsibility of Member States in the sphere of military transfers	Introduction of parliamentary and civil society oversight mechanisms over export operations

Source: based on [8-17]

First and foremost, it is advisable to adopt the institutional mechanisms of the European Union, in particular the practice of mandatory reporting, which enhances the level of public accountability and trust in the decisions of national control authorities, as well as the system of mutual notification of licence denials, which minimises the risks of re-export and the illicit transfer of arms. The Ukrainian system can be strengthened through the harmonisation of licensing criteria with European standards, thereby reducing the scope for subjectivity in decision-making and creating the conditions for transparent integration into the common security market.

Another important direction is the institutionalisation of parliamentary and civil society oversight of military exports, which would correspond to European requirements for transparency and ensure greater democratic legitimacy of policy decisions in this sphere. Particular emphasis should also be placed on the importance of digitalising licensing procedures, as introduced in the EU Member States, which enable the efficient exchange of data between government bodies and international partners, as well as integration into global monitoring and control systems. Thus, the adaptation of the European experience will contribute to the establishment in Ukraine of a modern and effective export control system that simultaneously meets national security requirements and international standards, while enhancing the state's capacity to be a reliable partner in the field of non-proliferation of arms and international military-technical cooperation.

## 6. Conclusions and prospects for further research in this area

The conducted analysis indicates that the export control system for military-purpose and dual-use goods in the European Union is based on a combination of the material interests of member states and jointly developed norms, which together form the politico-legal framework for regulating this process. At the core of current debates lies the issue of balancing security needs, economic interests, and compliance with international non-proliferation obligations. The adaptation of European standards to the Ukrainian context may provide a number of key advantages: enhancing the transparency and efficiency of the national export control system; strengthening trust on the part of international partners; and expanding access to markets for military-technical cooperation and defence innovations. At the same time, it is essential to account for internal challenges, including the need to update the regulatory framework, build institutional capacity, and establish effective dialogue between the public sector and private producers.

Thus, European experience demonstrates that an effective export control system requires not only restrictive mechanisms but also the creation of institutional conditions for the development of the defence-industrial complex in the context of global competition. For Ukraine, this implies the necessity of combining legal, economic, and political instruments, which would enable integration into the EU's common security space while simultaneously reinforcing national military-economic security as a prerequisite for sustainable integration into the European and Euro-Atlantic systems.

Further scholarly inquiry into the field of export control should be directed toward several key areas. First, it is important to investigate the possibilities of adapting the legal and institutional mechanisms of the European Union to the Ukrainian context, taking into account the wartime challenges and the needs of the defence-industrial complex. Second, a comparative analysis of the effectiveness of national export control systems in Central and Eastern European countries that have undergone EU integration appears particularly promising, as it would allow for the identification of optimal models for Ukraine. Third, it is essential to examine the impact of global technological trends – digitalization, artificial intelligence, biotechnology, and «green» innovations – on the evolution of international regimes governing dual-use goods. Finally, special attention should be devoted to exploring the balance between security and economic interests in the field of military-technical cooperation, which necessitates an interdisciplinary approach that integrates legal, economic, and governance perspectives.

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