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As part of this effort, strike force cells stationed in twelve American cities are using all-source information to pursue investigations and impose criminal and/or administrative penalties as appropriate.

While this list is not exclusive, disruptive technology may include:

- Advanced Semiconductors: logic/artificial intelligence (AI) chips, associated fabrication equipment, electronic design automation (EDA) software/technology, and novel materials for production below 14 nanometers (nm)
- Supercomputer Computing Hardware: including graphics processing units (GPUs), and software (including for modeling/simulations)
- Quantum Technologies
- Hypersonic Technologies
- Military Bioscience/Technology (e.g., human performance enhancements like brain computer interfaces)
- Advanced Aerospace Technology

4 – Challenges faced by banks

Despite their best efforts, banks encounter several challenges in fulfilling their obligations concerning export control compliance. These challenges include the following:

4.1. Complex regulatory landscape

The ever-evolving nature of export control regulations poses a significant challenge for banks, requiring them to constantly adapt their compliance frameworks to align with new regulatory requirements and international standards.

4.2. Resource constraints

Implementing robust compliance programs requires substantial financial and human resources, which may pose challenges for smaller banks with limited budgets and staffing capabilities.

4.3. Technological limitations

The effectiveness of banks' compliance efforts heavily relies on the sophistication of their technological infrastructure. However, many banks struggle with outdated systems and legacy processes, hindering their ability to effectively monitor and mitigate compliance risks.

4.4. Cross-border transactions

The proliferation of cross-border transactions further complicates banks' compliance efforts, as they must navigate disparate regulatory regimes and coordinate with foreign counterparts to ensure adherence to export control regulations.

4.5. Reliance on client declarations

To face the new restrictions, the primary reaction of financial institutions seemed to rely on declarations provided by their clients. This approach can nevertheless result in the liability of the financial institution not being discharged should economic sanctions restrictions be breached. The EU Commission is requiring banks to exercise due diligence because they "cannot

rely on the sole declaration of their customer that the goods and technology concerned are not covered by restrictive measures". The reason for that requirement resides in that, "while it is true that primary responsibility for the classification of goods and technology lies with those responsible for sending or receiving such items, the prohibition to provide financial assistance for the goods subject to a ban is (...) incumbent upon banks".

However, financial institutions generally do not have the required internal expertise in qualifying tangible/intangible items, software or technologies as being export controlled.

PART 2 - Continue the reading in AGEFI Luxembourg May 2024 with the following chapter:

5. Applying a risk-based approach to Trade Finance

- 1) RespectUs is a Luxembourg start-up, graduated from Fit4Start (9th ed., 2020) in the space vertical. It has built a digital one-stop-shop digital platform for export control compliance (www.respectus.eu), in the frame of the Luxembourg national space programme LuxIMPULSE (2021-2023) through an ESA contract. The software has been validated by the European Space Agency in August 2023. Web www.respectus.space
- 2) Part 2 will be published in the May 2024 edition of AGEFI. The complete eBook "Export Control Compliance: The Imperative for Banks and Financial Services Providers", may be downloaded under the link <https://respectus.space/knowledge-hub/>
- 3) The White House, Background Press Call on Upcoming Action to Continue Holding Russia Accountable. 21 December 2023, <https://www.whitehouse.gov/eaw/nr/2023/12/21/>
- 4) See FinCEN & BIS Joint Alert, FinCEN and the U.S. Department of Commerce's Bureau of Industry and Security Urge Increased Vigilance for Potential Russian and Belarusian Export Control Evasion Attempts, 28 June 2022, <https://www.fincen.gov/news/news-releases/2022-06-28>; FinCEN & BIS Joint Alert, Supplemental Alert: FinCEN and the U.S. Department of Commerce's Bureau of Industry and Security Urge Continued Vigilance for Potential Russian Export Control Evasion Attempts, 19 May 2023, <https://www.fincen.gov/news/news-releases/2023-05-19>; FinCEN & BIS Joint Alert, FinCEN and the U.S. Department of Commerce's Bureau of Industry and Security Announce New Reporting Key Term and Highlight Red Flags Relating to Global Evasion of U.S. Export Controls, 6 November 2023, <https://www.fincen.gov/news/news-releases/2023-11-06>
- 5) A term defined broadly to include "any foreign entity that is engaged in the business of accepting deposits; making, granting, transferring, holding, or brokering loans or credits; purchasing or selling foreign exchange, securities, futures or options; or procuring purchasers and sellers thereof, as principal or agent. It includes depository institutions; banks; savings banks; money services businesses; operators of credit card systems; trust companies; insurance companies; securities brokers and dealers; futures and options brokers and dealers; forward contract and foreign exchange merchants; securities and commodities exchanges; clearing corporations; investment companies; employee benefit plans; dealers in precious metals, stones, or jewels; and holding companies, affiliates, or subsidiaries of any of the foregoing." EO 14024 11(f), as amended by EO 14114.
- 6) See: "Commission welcomes political agreement on new rules criminalizing the violation of EU sanctions", Press release, 12 December 2023, https://ec.europa.eu/commission/presscorner/detail/en/pr_23_2500
- 7) European Commission, Guidance for EU operators: Implementing enhanced due diligence to shield against Russia sanctions circumvention, December 2023, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2500
- 8) The GECC includes Iceland, Liechtenstein, Norway, Switzerland, Australia, Canada, the 27 Member States of the European Union (EU), Japan, South Korea, Taiwan, New Zealand, the United States, and the United Kingdom (UK). These countries are also listed in supplement 3 to part 746 of the Export Administration Regulations (EAR) and have committed to implementing substantially similar export controls on Russia and Belarus.
- 9) See White House, "Executive Order on Prohibiting Certain Imports, Exports, and New Investment with Respect to Continued Russian Federation Aggression," (11 March 2022)
- 10) See BIS Press Release, "Commerce Restricts the Export of Luxury Goods to Russia and Belarus and to Russian and Belarusian Oligarchs and Malign Actors in Latest Response to Aggression Against Ukraine," (11 March 2022).
- 11) See BIS Press Release, "Commerce Imposes Sweeping Export Restrictions on Belarus for Enabling Russia's Further Invasion of Ukraine," (2 March 2022)
- 12) See BIS Press Release, "Commerce Imposes Additional Export Restrictions in Response to Russia's Brutal War on Ukraine" (24 February 2023).
- 13) Accessible under the link <https://ec.europa.eu/eu/external-representation/2023/02/24/>
- 14) Supplement 4 to Part 744 of the EAR
- 15) Supplement 6 to Part 744 of the EAR
- 16) Supplement 7 to Part 744 of the EAR
- 17) Accessible under the link www.trade.gov/consolidated-screening-list
- 18) Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast), [http://eur-lex.europa.eu/eli/reg/2021/821/2021-12-16](https://eur-lex.europa.eu/eli/reg/2021/821/2021-12-16)
- 19) Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, [http://eur-lex.europa.eu/eli/reg/2014/833/2014-02-24](https://eur-lex.europa.eu/eli/reg/2014/833/2014-02-24)
- 20) as listed in Annex I to EU Dual-Use Regulation 2021/821
- 21) as listed in Annex II to Regulation (EU) 833/2014
- 22) as listed in Annex XX to Regulation (EU) 833/2014
- 23) as listed in Annex X to Regulation (EU) 833/2014
- 24) as listed in Annex XI to Regulation (EU) 833/2014
- 25) as listed in Annex XVI to Regulation (EU) 833/2014
- 26) as listed in Annex XVIII to Regulation (EU) 833/2014
- 27) as listed in Annex XX to Regulation (EU) 833/2014
- 28) as listed in Annex XXIII to Regulation (EU) 833/2014
- 29) as listed in Annex I to Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organized Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition
- 30) as listed in Annex XXXV to Regulation (EU) 833/2014
- 31) Art. 2(7) of EU Dual-Use Regulation 2021/821. See also Art. 2.k of Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment
- 32) Regulation 833/2014, Art. 1(d). See also: Council Regulation (EU) 692/2014 of 23 June 2014 concerning restrictions on the import into the Union of goods originating in Crime or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol, Art. 1(e); Council Regulation (EU) 2022/263 of 23 February 2022 concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas, Art. 1(a). The same is the case for other EU sanctions regulations, see for example, Council Regulation (EC) 1183/2005 of 18 July 2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of Congo, Art. 1(i); Council Regulation (EU) 224/2014 of 10 March 2014 concerning restrictive measures in view of the situation in the Central African Republic, Art. 1.a.; Council Regulation (EU) 401/2013 of 2 May 2013 concerning restrictive measures in respect of Myanmar/Burma, Art. 1.i.
- 33) Council Regulation (EU) 833/2014, Art. 1(o). Such financing or financial assistance is, for example, prohibited when they are related to goods and technology listed in the EU Common Military List (Council Regulation (EU) 833/2014, Art. 4.1.b.) or dual-use items (Art. 2.2.b.) that are exported to Russia.
- 34) See Treasury Press Release, "FACT SHEET: Disrupting and Degrading - One Year of U.S. Sanctions on Russia and Its Enablers" (24 February 2023). See also Department of Justice (DOJ) Press Release, "FACT SHEET: Justice Department Efforts in Response to Russia's February 2022 Invasion of Ukraine" (24 February 2023) and U.S. Department of State Press Release, "The Impact of Sanctions and Export Controls on the Russian Federation" (20 October 2022). See also BIS Press Release, "Remarks by Assistant Secretary Thea D. Rozman Kandler to the Association of Women in International Trade (AWIT)" (2 March 2023).
- 35) See DOJ Press Release, "Federal Court Orders Forfeiture of \$826K in Funds Used in Attempt to Export Dual-Use High Precision Jig Grinder to Russia" (5 April 2023); BIS Press Release, "Microsoft to Pay Over \$3.3M in Total Combined Civil Penalties to BIS and OFAC to Resolve Alleged and Apparent Violations of U.S. Export Controls and Sanctions" (6 April 2023); U.S. Attorney's Office, Eastern District of New York Press Release, "United States Obtains Warrant for Seizure of Airplane Owned by Russian Oil Company Valued at Over \$25 Million" (8 March 2023); BIS Press Release, "BIS Takes Action Against Russian National and Related Company for Sending Controlled Counterintelligence Items to Russia and North Korea" (24 February 2023), and "Commerce Cuts Off Russia Procurement Network Evading Export Controls" (December 2022 BIS Enforcement Action) (13 December 2022).
- 36) Challenges of Export Controls Enforcement - How Russia continues to import components for its military production, by Olena Bilousova, Benjamin Hilgenstock, Elna Ribakova, Nataliia Shapoval, Anna Vlasjuk and Vladislav Vasiuk, January 2024, <https://www.fishr.org/>
- 37) See DOJ Press Release, "Departments of Justice, Commerce and Treasury Issue Joint Compliance Note on Russia Related Sanctions Evasion and Export Controls" (2 March 2023).
- 38) See OFAC, "Specially Designated Nationals and Blocked Persons List (SDN) Human Readable Lists"
- 39) See December 2022 BIS Enforcement Action
- 40) For a full list of items that now require a license if destined for Russia or Belarus, see 15 CFR Part 746, Supp. Nos. 2, 4, and 5, and Part 774, Supp. No. 1, to EAR.
- 41) Economically Critical Goods List (Version of 18 October 2023); <https://ec.europa.eu/eu/external-representation/2023/10/18/>
- 42) The complete list is also published in the eBook "Export Control Compliance: The Imperative for Banks and Financial Services Providers", that may be downloaded under the link <https://respectus.space/knowledge-hub/>
- 43) On 14 September 2023, the U.S. BIS published a tiered list of 45 "common high-priority items" by HS Code that consolidated and expanded on previous notices. Two weeks later, the United States, Australia, Canada, New Zealand, and the United Kingdom (collectively the "Export Enforcement Five" or "E5") released a joint guidance notice prioritizing the new tiered list for export enforcement in all five countries.
- 44) List of Common High Priority Items (Version of February 2024): <https://ec.europa.eu/eu/external-representation/2024/02/24/>
- 45) The complete list is published in the eBook "Export Control Compliance: The Imperative for Banks and Financial Services Providers", that may be downloaded under the link <https://respectus.space/knowledge-hub/>
- 46) Challenges of Export Controls Enforcement - How Russia continues to import components for its military production, by Olena Bilousova, Benjamin Hilgenstock, Elna Ribakova, Nataliia Shapoval, Anna Vlasjuk and Vladislav Vasiuk, January 2024, <https://www.fishr.org/>
- 47) The complete list is published in the eBook "Export Control Compliance: The Imperative for Banks and Financial Services Providers", that may be downloaded under the link <https://respectus.space/knowledge-hub/>
- 48) See DOJ Press Release, "Justice and Commerce Departments Announce Creation of Disruptive Technology Strike Force" (Feb. 16, 2023); see also DOJ Press Release, "Justice Department Announces Five Cases as Part of Recently Launched Disruptive Technology Strike Force" (May 16, 2023).
- 49) Commission Guidance Note on the implementation of certain provisions of Regulation (EU) No 833/2014, Commission Notice of 25.8.2017, C(2017) 5738 final

Navigating through operational tax complexities

In the dynamic global financial environment, navigating the complexities of tax regulations such as the Foreign Account Tax Compliance Act (FATCA), Common Reporting Standard (CRS), Directive on Administrative Cooperation 6, 7 and 8 (DAC6, DAC7 and DAC8), and the Central Electronic System of Payment information (CESOP) present considerable challenges.

Challenge #1 - Evolving regulations

Since the entry into force of DAC7, each Luxembourg financial institution (FI) is required to notify each reportable individual in the scope of CRS that their personal and financial information will be gathered and transmitted in accordance with the law. In this context, personal information refers to individual data such as name, address, jurisdiction of tax residency/residencies, and tax identification number, while financial information refers to the total gross amount paid or credited, and/or the value of the debt or equity position within the financial institution at the end of the calendar year or another relevant reference period.

Reporting FIs must notify their individual clients and the controlling persons of passive non-financial entity clients subject to reporting under CRS about their personal and financial information which will be reported to the Luxembourg tax authority. This notification should be performed every year prior to the exchange of information with the authorities.

In addition, the FI must provide those individuals with details about how to request the data controller, and also provide access to the information within a reasonable timeframe. If required, they will also allow the individuals to exercise their data protection rights. This requirement must be met before any information is shared with the Luxembourg tax authority.



the opportunity to check plausibility of mandatory data, such as foreign tax numbers, addresses, GIIN, and VAT numbers, etc.

Storing and processing inaccurate data may lead to incorrect reporting and expose financial institutions and their clients to tax investigations and penalties.

Data is gold and we recommend that:

- A full data check be carried out from data collection to report submission.
- Financial institutions continually analyze and clean their data leading up to annual filing.

Challenge #3 - Complexity

It is important to mention that the (Automatic Exchange of Information (AEOI) requirements are closely related to Anti-Money Laundering (AML) rules, the Anti-Tax Avoidance Directive 2 (ATAD 2), and the General Data Protection Regulation (GDPR). In addition to the regulations mentioned earlier, DAC8, a new directive, was issued in October 2023. This Directive focuses on imposing transaction reporting obligations on crypto-asset service providers, but it also extends its reach to existing directives, particularly DAC2 (CRS) and DAC6 (Mandatory Disclosure Regime).

A critical aspect of simplifying this complexity is ensuring data accuracy and integrity.

Tax topics cannot be handled in silos and we recommend that:

- Financial institutions develop and execute a comprehensive strategy that addresses these interconnected aspects of global finance.
- They continuously improve data security measures to maintain compliance.

Challenge #4 - Governance

Policies and procedures must be well documented, and FIs must remain informed about filing deadlines and changes to reporting requirements and schemes.

FIs must also be prepared to respond to various type of inquiries from tax authorities regarding data exchanged, governance and compliance programs, and evidence on proper tax data management.

Based on the statistics provided by the tax authority (*Administration des contributions directes* (ACD)), the penalties are more than doubling on a yearly basis and increased by 398% between 2021 and 2023. This confirms the increased scrutiny of the authorities and that penalties for instances of non-compliance are not only a possibility but a reality.

Years	2021	2022	2023
Fines	108	177	216
Penalties	441 000	950 000	2 197 050
	-	+115% vs previous year	+131% vs previous year

These facts highlight the importance of investing the right effort and means to properly manage AEOI regulations. The operational challenges to comply with tax regulations such as FATCA, the DACs, and CESOP should not be underestimated.

Regulations are transversal topics and multi-disciplinary teams should be involved. Various stakeholders, such as banks, financial institutions, digital platformers, and crypto-asset service providers should remain pragmatic when putting in place procedures and defining their target operating models.

Due to high level of specialization of key players, outsourcing of operational tax duties is also part of the possible robust approaches to tackle these challenges.

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