



EU Export Control Policy Review

Online public consultation report

23 November 2015



1. The online open public consultation on the EU Export Control Policy Review

On 15 July 2015, the European Commission launched an open online public consultation with a view to collecting stakeholders' input on the EU Export Control Policy Review ("the Review"). Stakeholders were invited to respond to 38 questions covering the range of themes and options outlined in the [Communication \(2014\)244](#), including the modernization of controls, the optimization of licensing architecture, harmonization of controls at EU and global level, controls of technology transfers and the development of a "human security" approach taking into consideration the links between security and human rights.

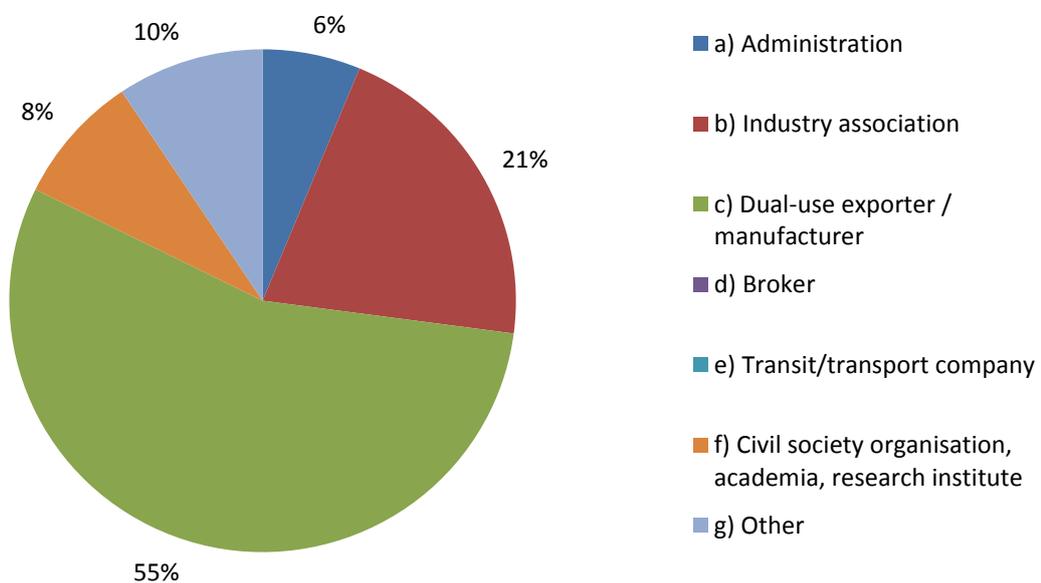
The Commission received 97 responses to the online public consultation, coming mainly from industry associations and civil society. Stakeholders' responses have been published online according to the Commission applicable rules.¹ They can be found together with a list of contributors via: http://trade.ec.europa.eu/consultations/index.cfm?consul_id=190

The results of the online public consultation will be complemented with the stakeholders views collected in the other consultation activities.

1.1 Overview of respondents

97 responses were received.² They were submitted mainly by dual-use exporters and manufacturers (55%). Industry associations (21%), civil society representatives (8%) and Member States Authorities (6%) also took part in the consultation.³

Figure 1: Breakdown of respondents by category



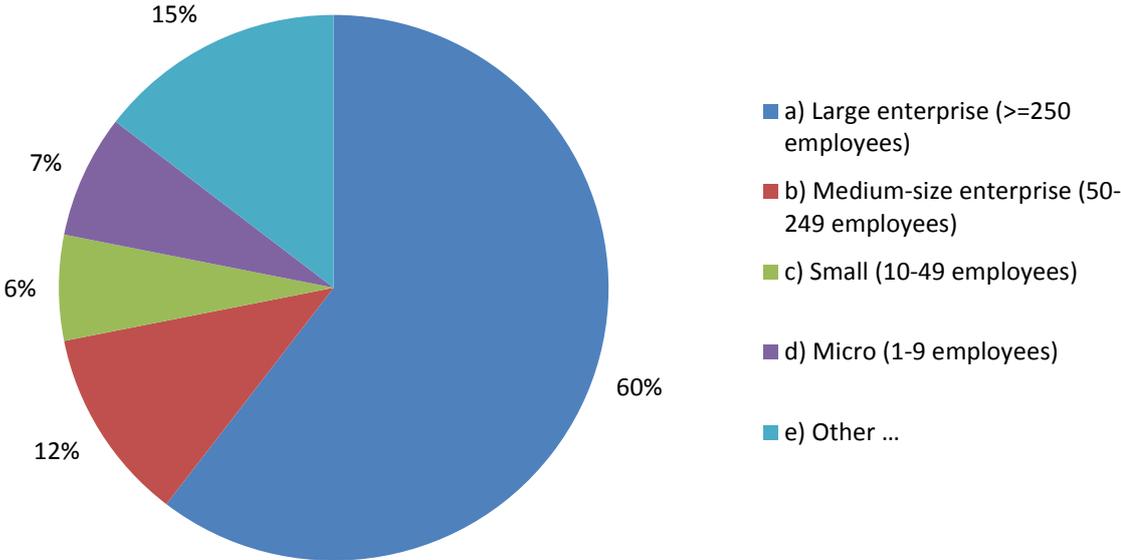
¹ In accordance with paragraph 3 of the Specific Privacy Statement of the Online Public Consultation on the Export Control Policy Review, all the contributions received, together with the identification data of the respondent, have been published on the Internet, except for those where respondents expressed explicit objection in the questionnaire.

² Two responses were not related to the consultation topic and will not therefore be included in the following analysis.

³ The remaining 10% included individuals as well as companies and associations declaring not to be part of any of the abovementioned categories.

The key dual use industries took part in the consultation, with a strong representation from the industrial goods sector (including machinery and equipment) and the computer/electronics sectors (27% and 15% respectively). Other reported sectors included energy including nuclear (9%), space/aeronautics (8%), telecommunications (7%) and chemicals (2%). Most of the respondent companies were large organizations⁴ (i.e. enterprises with at least 250 employees, 60%), but about one quarter of the respondents were SMEs (24%)⁵.

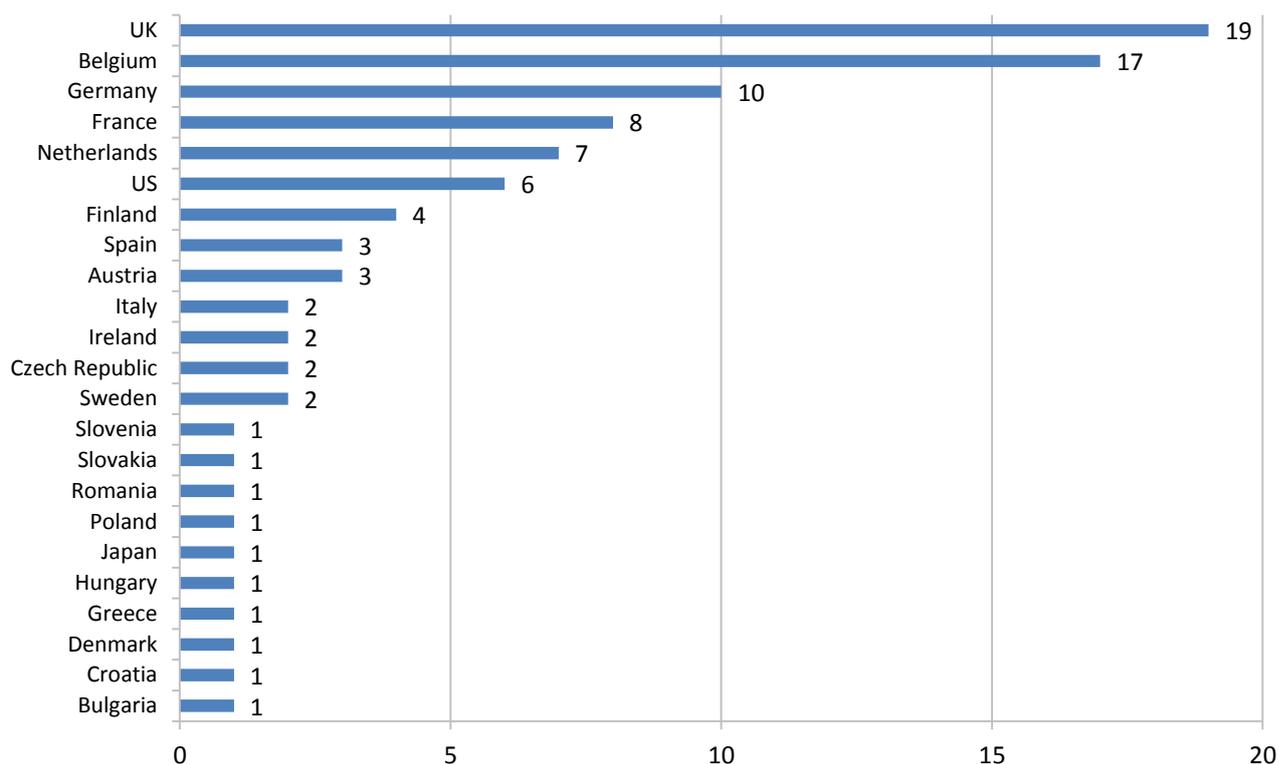
Figure 2: Breakdown of respondents by size⁶



Finally, in terms of geographical distribution, most industry associations which replied to the questionnaire are based in Belgium, but are expected to represent operators from all over Europe. Three EU Member States – UK (20%), Belgium (17%) and Germany (12%) – accounted for almost half of total respondents. 7% of replies came from stakeholders established outside of the EU, namely the United States of America and Japan.

⁴ For the purposes of the questionnaire, large enterprises are defined as those with at least 250 employees.
⁵ In detail, the breakdown between small, medium and micro enterprises was respectively 6%, 11% and 7%.
⁶ The category "Other" includes four Member States licensing authorities, one individual and nine industry associations.

Figure 3: Breakdown of respondents by country



1.2 Summary of the respondents' contribution by issue

1.2.1 Baseline scenario, objectives and review options.

The large majority of respondents (86%) agreed that a review of current EU export control rules would improve the export control system, in particular with regards to its capacity to address evolving security risks such as WMD proliferation and terrorism (according to 62% of respondents) and to respond to rapid scientific and technological developments (58%). According to the majority of respondents, the Review would also significantly enhance the efficiency of export control administration (55%) and enhance EU companies' competitiveness (49%). On the other end, most participants did not foresee significant environmental or social impacts (including on the job market) stemming from the Review (respectively 71% and 80% of respondents). 34% of respondents suggested that the Review could support the prevention of human rights violation in third countries; on the contrary, 25% disagreed with this statement.

1.2.2 Impact of review options

1.2.2.1 Human security approach

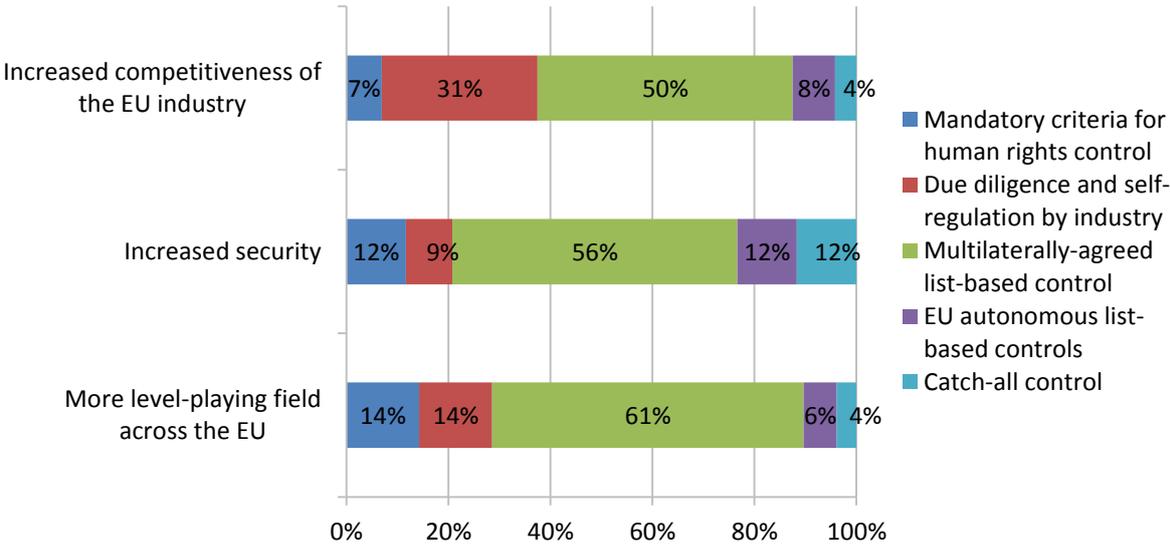
Respondents expressed diverging views on the introduction of provisions based on the concept of human security in the EU export control regulation.⁷ A significant share of respondents (c. 40%) did not believe that the adoption of a human security approach would improve EU security and decrease the risk that EU exports of cyber-surveillance technology could be misused in human rights violations.

⁷ As outlined in the Communication 2014(244), the "human security approach" intends to place people at the heart of EU export control policy, in particular by recognising the interlinkages between human rights, peace and security. See http://trade.ec.europa.eu/doclib/docs/2014/april/tradoc_152446.pdf

In particular, 40% of respondents did not deem the inclusion of a human rights control criterion as an effective instrument to reduce the misuse of dual-use items to commit human rights violations. 45% of respondents suggested that reviewing the definition of dual use items would not reduce this risk either. On the other hand, 31% and 30% of respondents, respectively - most of which were representatives of civil society - supported the opposite views.

Figure 4 shows the views of respondents on the effectiveness of different possible applications of the human security approach in the areas of competitiveness, security and the level playing field. While civil society representatives preferred mandatory criteria for human rights control as the most effective action, the overall set of respondents supported a broader set actions, in particular the introduction of multilaterally agreed list-based controls.

Figure 4: Would you agree that the actions to pursue the "human security approach" will likely have the following impact?



1.2.2.2 "Smart security" mechanism and modernisation of trade controls

The majority of respondents agreed that a "smart security approach", in the form of voluntary technical consultations on dual-use items (c. 70%), yearly updates of the EU control list (66%), regular consultations with industry and development of guidelines (92%) and coordination of the EU position in multilateral export control regimes (69%), would be beneficial for the EU export control policy.

Furthermore, a significant share of respondents agreed that clarifying the definition of exporter, the criteria for determination of the competent authority, the jurisdiction clause to control transactions between third countries involving EU persons, and the scope of brokering, technical assistance and transit controls in the EU would increase the effectiveness of controls (58%), the level playing-field (60%) and improve legal clarity (75%).

The analysis of responses did not highlight any significant divergence of views among different categories of participants.

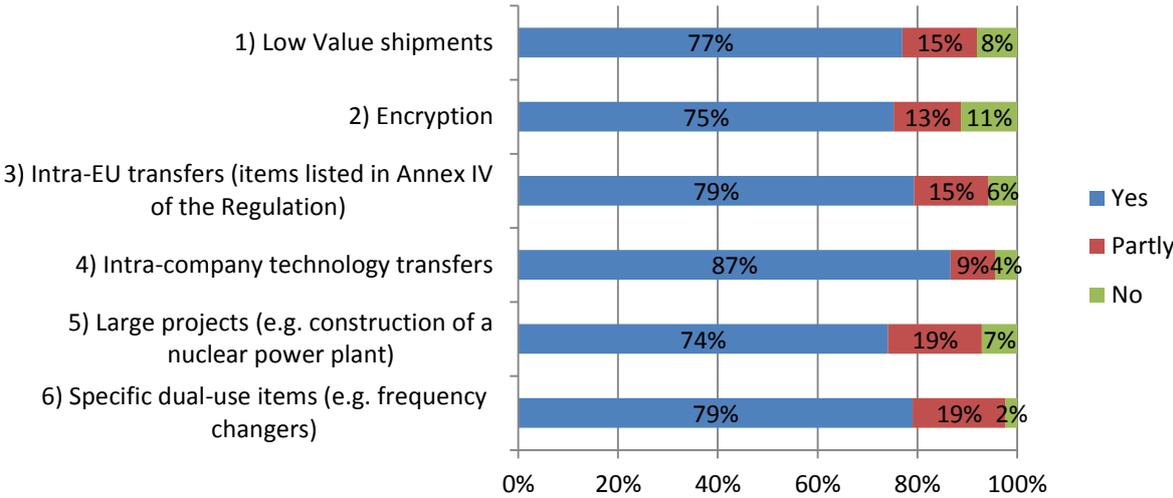
1.2.2.3 Strategy for "immaterial control"

With regard to the strategy for immaterial control outlined in the [Communication \(2014\)244](#),⁸ 85% of respondents supported the introduction of an EU General Export Authorization (EUGEA) or global license for intra-company technology transfers. While industry associations and companies supported the introduction of new types of EUGEAs, civil society expressed concerns over possible misuses of such authorizations. 76% of respondents also supported outreach to industry and academia in the form of public guidance for technology transfers and dual-use research aimed at enhancing the enforcement of controls while preserving academic freedom.

1.2.2.4 Optimisation of the licensing architecture

Respondents agreed on the utility of further harmonization in EU export authorizations to minimize distortions of competition (86%) and reduce export control management costs, in particular for SMEs (66%). They also supported the shift from "paper-based" ex-ante controls on transactions to pre- and post- transactions controls on companies to enhance controls' effectiveness (66%). In particular, with regard to the specific export control options, 75% of respondents agreed that granting the European Commission the competence to modify, in consultation with experts from Member States, the list of EUGEAs and their content could help ensure an efficient and effective use of EUGEAs. Figure 5 shows the specific areas where respondents supported the introduction of EUGEAs.

Figure 5: Would you support the introduction of any of the following EUGEAs?



A significant share of respondents (74%) also suggested that a regular review of existing national general export authorization (NGEAs) should be carried out with a view to transforming them into EU general export authorizations (EUGEAs).

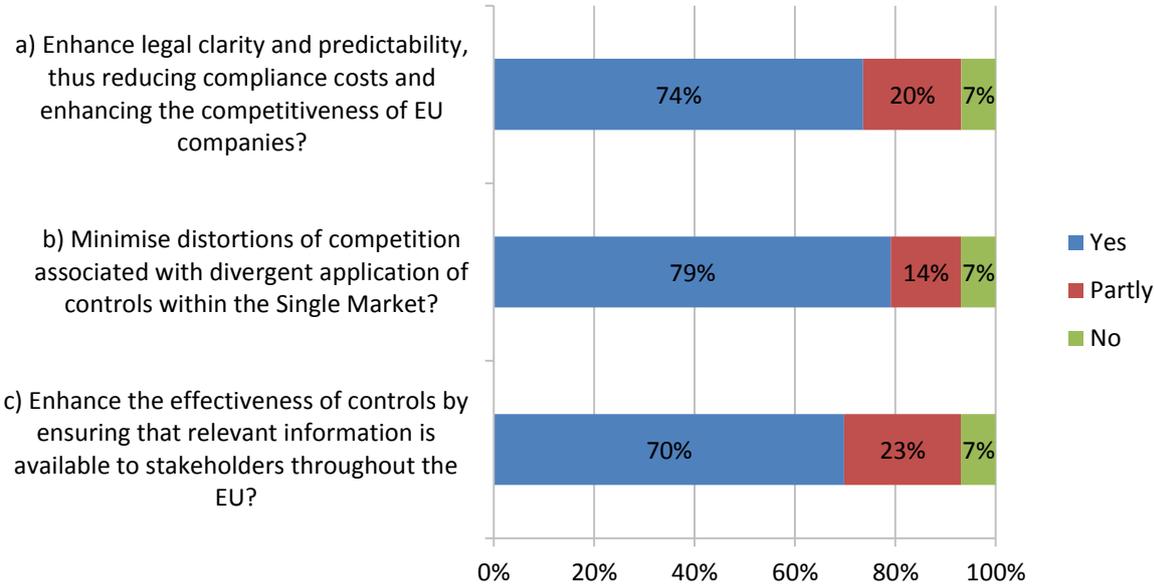
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1.2.2.5 Convergence of "catch-all controls"

⁸ The development of a strategy for "immaterial control" would be aimed at moving beyond the current focus on tangible (goods) transactions towards electronic movement of data that can be used to modify and produce unlimited quantities of sensitive items. Concretely, this would entail addressing the challenge posed by Intangible Transfers of Technology (ITT), including the need to clarify the control of 'dual-use research', while avoiding undue obstacles to the free flow of knowledge and the global competitiveness of EU science and technology.

A large majority of respondents expressed interest in further developing the concept of catch all in the Export Control Policy Review.⁹ Figure 6 highlights the benefits that, according to respondents, could be produced by a greater convergence of catch-all controls in the EU.

Figure 6: Would you agree that actions to promote a greater convergence of catch-all controls could:



In order to achieve the above-mentioned targets, respondents suggested to harmonize the definition and scope of catch-all controls (e.g. regarding destinations, end-users and items covered by the catch-all control) (86%); to introduce a mandatory consultation process between licensing authorities to support uniform EU-wide application of catch-all controls (61%); and to enhance transparency with exporters – including the possibility of publication of catch all requirements (75%).

The analysis of responses did not highlight any significant divergence of views among different categories of participants.

1.2.2.6 Critical re-evaluation of intra-EU transfer controls

With regards to intra-EU controls, 77% of respondents agreed that updating the list of items in Annex IV to the export control regulation could help bringing controls in line with technological developments and commercial availability. Furthermore, c. 60% of respondents suggested that the actions to review intra-EU transfer controls, including the review of the list of most sensitive items in Annex IV and/or the introduction of new EUGEAs associated with new possibilities for controls (e.g. post-shipment verification), would at the same time enhance the effectiveness of controls and decrease compliance costs.

The analysis of responses did not highlight any significant divergence of views among different categories of participants.

1.2.2.7 Development of an EU export control network

⁹ "Catch-all controls" apply to items that are not listed in the Dual Use Regulation when there are indications that they pose a risk of proliferation or military application. A summary of the basic concepts of Dual Use Export Controls can be found at the link: http://trade.ec.europa.eu/doclib/docs/2014/february/tradoc_152181.pdf

Another area where respondents' views were relatively homogeneous is the one regarding the development of an EU export control network. 78% of respondents agreed that the development of a common IT infrastructure (including e.g. the introduction of electronic licensing for all competent authorities) could usefully contribute to consistent and efficient implementation of controls within the EU. An even larger share (89%) suggested that the introduction of EU-wide capacity-building and training for officials from licensing and other relevant administrations, and outreach to industry and academia would be very beneficial for the enforcement of EU export controls. Reducing the fragmentation of controls across the EU and reducing the risks of "license shopping" were quoted as the most valuable objectives achievable through the implementation of an EU export control network.

The analysis of responses did not highlight any significant divergence of views among different categories of participants.

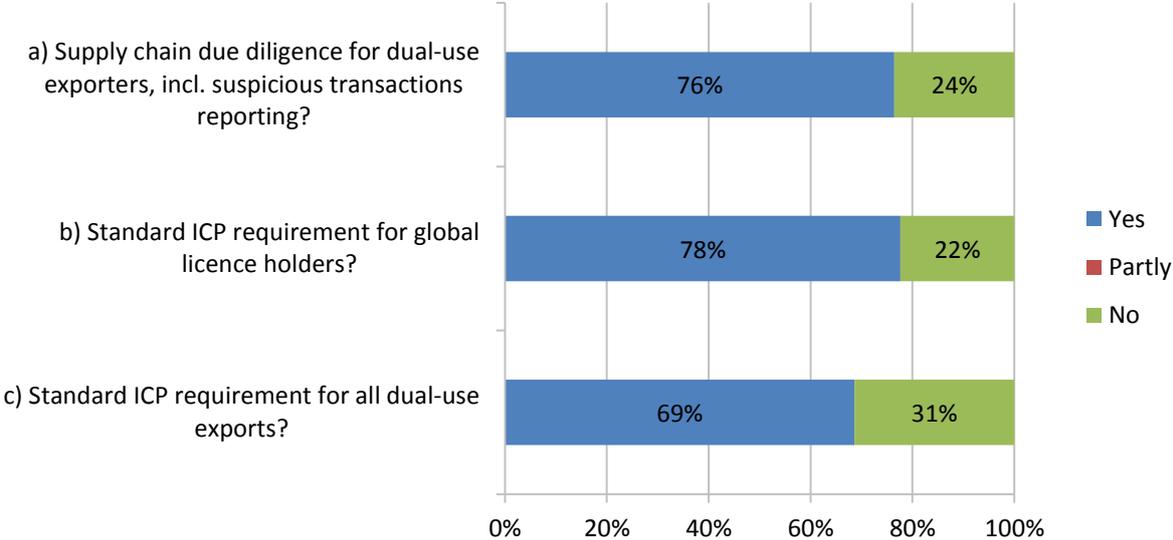
1.2.2.8 Private sector partnership

A very large share of respondents suggested that developing a private sector partnership, as outlined in the Communication, would be helpful in promoting the level-playing field within the Single Market (73%), promoting the global convergence of controls (75%) and enhancing the effectiveness of controls (77%).

In particular, Figure 7 outlines respondents' views on the effectiveness of possible options for introducing industry compliance standards.

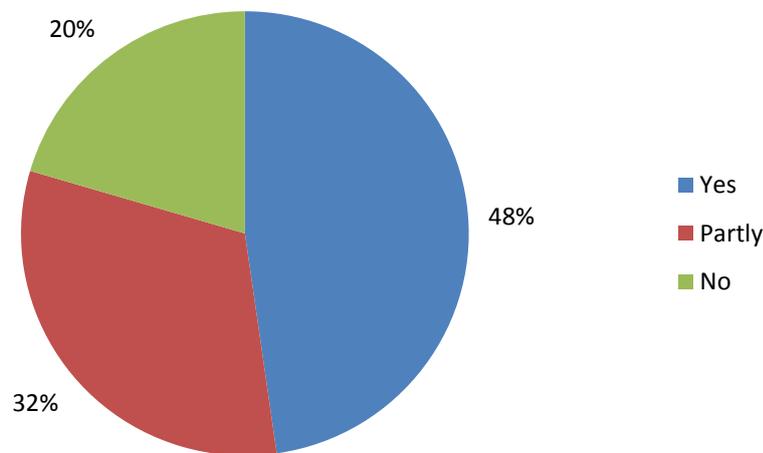
The analysis of responses did not highlight any significant divergence of views among different categories of participants.

Figure 7: Would you consider that the following options for introducing industry compliance standards, would enhance the level-playing field while containing compliance costs and administrative burden:



70% of respondents also indicated that guidelines and structured outreach activities to the private sector would improve the effectiveness of the EU export control system. With regard, to SMEs, Figure 8 summarizes respondents' views: c. 50% of respondents supported the introduction of standard compliance requirements in order to reduce the costs of compliance, thus increasing SMEs' capacity to export dual use items.

Figure 8: Would you agree that the development of a "private sector partnership", through standard compliance requirements containing compliance costs, could support SMEs' capacity to export dual-use items?



1.2.2.9 Global convergence

Views of respondents were less homogeneous on the possible introduction of "end-use monitoring" (i.e. verification of the end-use directly at the premises of the end-user in a third country). While 44% of respondents supported the idea, 40% did not show confidence in its effectiveness. On the other hand, 66% of respondents agreed that EU participation in all multilateral export control regimes would appropriately reflect the EU's role as a key security and trade actor, and would allow the EU to better promote its interests and represent its export control system. Similarly, 79% of respondents supported EU outreach efforts towards third countries so as to disseminate EU best practices and improve the level-playing field.

The analysis of responses did not highlight any significant divergence of views among different categories of participants.

2. Next steps

The Commission will take into account the views expressed by stakeholders in the open public consultation, as well as in the other stakeholder consultation activities outlined in the [consultation strategy](#), in the preparation of the Impact Assessment report and in the formulation of future regulatory proposals.