Présidence
du Conseil de
l'Union européenne

GRAND-DUCHÉ DE
luxembourg

European
Commission

2015 EXPORT CONTROL FORUM

The export control policy review: state of play and prospects

Monday, 7 December 2015
Brussels, Albert Borschette Conference Centre (CCAB AB-0D)
Rue Froissart 36, 1040 Etterbeek

10.00h – 17:30h

Registration from 09.00h on

AGENDA

09:00   **Registration / Welcome Coffee**

10:00   **Opening of the 2015 Export Control Forum – assessing the impact of review options**

- *Mr. Stéphane Aumer (Head of Licensing Office, Luxembourg Presidency of the EU)*
- *Mr. Denis Redonnet (Director, DG Trade, European Commission)*

10:20   **Overview of the findings of the 2015 public consultation**

10:30   **"Human security approach" and control of cyber-surveillance technologies.** *The Communication recognises that security and human rights are inextricably interlinked and that the proliferation of new technologies – in particular cyber-surveillance technology – increasingly poses a risk for human rights and for the security of the EU and its citizens. It suggests developing a wider "human security approach" defending fundamental rights and digital freedoms in a globally connected world, through the introduction of human rights criteria and the control of additional cyber-surveillance technologies.*

11:00   **"Smart security approach" - adjusting to the transformations of dual-use items and the proliferation of new technologies.** *The action proposes to develop a "smart security" mechanism, mobilising the expertise available within export control authorities and through structured engagement with industry, in order to allow the EU to respond to rapid technological and scientific development.*

11:30 **Modernised control modalities.** *This action suggests to address the porosity of legal and illicit trade, and suggests options for strengthening the legal basis and upgrading certain control modalities in light of past experience and in order to cover all aspects and actors in the chain of controls, as well as addressing divergent applications of controls and related vulnerabilities. This could include clarifications and improvements of key concepts and definitions in the export control regulation such as determination of the competent authority, control of technical assistance, brokering and transit controls, circumvention of controls.*

12:00 **Strategy for "immaterial control".** *The Communication identifies the challenge posed by Intangible Transfers of Technology (ITT) and suggests a "strategy" for 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 and sets out options to enhance the control of ITT, including Dual-Use Research of Concern.*

12h30 **Optimisation of the licensing architecture.** *The Communication recognises that export controls are demanding in terms of administrative resources and therefore suggests to optimise the licensing architecture and promote a shift towards "open licensing" in order to minimise delays and distortions of competition, for instance by introducing additional EU General Export Authorisations (EUGEA) – e.g. on encryption, intra-EU transfers, intra-company technology transfers, Low Value Shipments, large projects. It also proposes a review of the parameters (destinations, items) for existing EUGEAs and harmonisation of licensing conditions*

13:00 **Lunch hosted by the European Commission**

14:30 **Convergence of catch-all controls.** *The Communication recognises that "catch-all controls" remain essential tools to prevent the use of non-listed items for proliferation, but acknowledges that uneven implementation has raised concerns in terms of legal clarity, distortions of competition and potential weak links in the chain of controls. It sets out options for greater convergence of catch all controls through harmonisation of the notion of catch-all controls, the establishment of an EU catch-all database and the strengthening of consultation mechanisms to ensure their EU-wide application.*

15:00 **Critical re-evaluation of intra-EU transfer controls.** *The Communication identifies a need to minimise remaining barriers within the Single Market, while acknowledging that there may be a need for keeping some form of control on the most sensitive dual-use items even within the EU Single Market. It outlines options for a critical re-evaluation of intra-EU transfer controls, such as an updated list of the most sensitive items (Annex IV of Regulation (EC) No 428/2009) and/or the introduction of an EUGEA for intra-EU transfers, including technology transfers*

15:30   **Development of an EU export control network.** *The Communication sets out options to develop a more integrated EU export control network in order to ensure consistent implementation and enforcement, but notes that a lack of solid EU-wide statistics and intelligence still hampers effective policy and operational responses. It suggests developing structured exchanges of information between export control authorities, operational cooperation with enforcement agencies, enhanced synergies between security-related trade control instruments as well as capacity-building (training) and export control outreach.*

16:00   **Coffee Break**

16:30   **Private sector partnership.** *The Communication stresses that the private sector plays a crucial role in the control chain, and proposes to develop a "partnership" with the private sector to enhance the security and resilience of the global supply chain, through better coordination between governments and the private sector, introduction of EU-wide standards for company compliance (e.g. Internal compliance programmes (ICP), due diligence, reporting of suspicious transactions ...), combined with greater transparency and outreach to the private sector and academia (including the development of guidance and other support tools such as electronic licensing systems).*

17:00   **Global convergence.** *The Communication stresses the need to reinvigorate EU action to promote the global convergence of controls, and sets out possible actions for promoting a more level-playing field e.g. information exchange with key partners, end-use monitoring of exports, mutual recognition of decisions, participation in export control regimes and external outreach.*

17:30   **Conclusion: from the 2015 impact assessment towards a modernised EU export control regime**

17:45   **End of the 2015 Export Control Forum**

2015 EXPORT CONTROL FORUM

The export control policy review:

ensuring security and competitiveness in a changing world

Brussels, Monday, 7 December 2015

The Commission and the Luxembourg Presidency of the Council jointly hosted an export control forum on 7 December 2015, in Brussels as a stakeholder consultation event in the context of the export control policy review. Over 100 stakeholders, including representatives of European and national business associations, dual-use exporters and manufacturers, civil society organisations as well as Member States' licensing authorities joined the Forum, which provided an opportunity for a frank exchange of views on the different issues addressed by the export control policy review.

The Commission and the Luxembourg Presidency of the Council opened the 2015 Export Control Forum by recalling the key stages of the export control policy review, drawing particular attention to the 2014 Communication and the ongoing Impact Assessment. The Commission presented the main findings of the online public consultation conducted from July to October 2015. Together with the other inputs collected by the Commission through the Data Collection project as well as through wider consultations with stakeholders, the findings of the online public consultation will support the finalization of the Impact Assessment report, which is planned to be presented to the Regulatory Scrutiny Board in March 2016. The Commission plans to adopt thereafter, in the first half of 2016, a proposal to amend Regulation 428/2009 so as to modernise the EU export control system.

The Commission outlined the underlying principles of the export control policy review, noting that trade and security are mutually reinforcing and outlining a vision of a modern export control system based on upgraded control provisions and the introduction of a new human security dimension to export controls.

1. Human security approach and the control of cyber-surveillance technology

Participants discussed the "human security approach", which could entail the introduction of human rights criteria for the control of dual-use exports and/or the establishment of new specific controls on cyber-surveillance technologies.

While acknowledging the importance of preserving human rights in trade and their contribution to security, many participants emphasised the need for controls to reconcile with global supply chains and to avoid introducing competitive unbalances between EU and third countries' dual-use industries. Participants expressed concern regarding the possible

broadening of the notion of dual-use item and noted that most dual-use items have little or no relation to human rights. They also doubted the capacity of business to detect, through due diligence, potential human rights violations that may result from the misuse, at some point in time, of the export of cyber-surveillance technology.

A number of participants stressed that controls based on human rights considerations would require clear and precise rules, in order to avoid excessive administrative burdens (for ex. as some companies must manage classification for millions of items). In this respect, some participants expressed particular concern regarding the introduction of human rights as an autonomous control criterion for catch-all controls in the dual-use export control regulation and enquired about prospects for a "targeted catch all controls" limited to specific categories of items. Some participants indicated a preference for a multilateral list approach.

Some participants stressed that human rights concerns are already taken into account in existing other export control regulations in particular sanctions regimes and arms export controls and supported the convergence of those various instruments. Some participants took the view that some of those instruments, such as sanctions, are better suited to address risks relating to human rights.

The Commission stressed that cyber-surveillance technologies are inherently dual-use and reflect the need for export controls to adjust to security concerns in the XXI century, and took note of comments regarding the various control approaches under consideration.

2. "Smart security approach" - adjusting to the transformations of dual-use items and the proliferation of new technologies

Participants expressed interest in the development of a smart security approach, and welcomed in particular the possibility to set up technical advisory committees bringing together experts from export control authorities and a specific industry. They also referred to the need for establishing regular exchanges and policy dialogue between export control authorities and industry.

3. Modernised control modalities

Participants welcomed prospects for clarifications and improvements of key concepts and definitions in the export control regulation, including the determination of the competent authority, the control of technical assistance, brokering and transit controls, as well as circumvention of controls. Some participants expressed concerns about the possible extension of brokering controls to terrorism or human rights, and raised issues regarding the applicability of controls. A number of participants also suggested that the review of the existing definition of exporter should avoid confusion and conflicts of competences among licensing authorities. Others pointed to existing overlaps between customs and dual-use regulations regarding the definition of transit.

4. Strategy for immaterial control

The challenged posed by intangible transfers of technology (ITT) was acknowledged and participants recognised the need to move beyond the current focus on exports of tangible goods. Participants from various industries (semiconductors, telecommunications, chemical, nuclear etc.) expressed support for the development of a new EU General Export

Authorisation (EUGEA) for inter-company technology transfers, as they cautioned against hampering cross-border research activities. Others suggested that technical assistance should not be subjected to dual-use export controls, except as part of technology transfer. Participants discussed access to technology and data, especially as cloud computing plays an ever-increasing role in business, and one participant noted that there exists a national authorisation for remote access to military technology, which could serve as a source of inspiration for dual-use technology.

5. Optimisation of licensing architecture

There was general consensus in favour of reducing the administrative burden for obtaining an export licence and participants welcomed the proposed shift towards 'open licensing' in order to minimise delays and distortions of competition. In particular, participants from the semi-conductor and telecommunications industries noted that encryption is nowadays contained in a great number of products with no security relevance and called specifically for an EUGEA on encryption, drawing attention to the existing US exemptions in this area. With regards to a possible low-value shipment EUGEA, one participant stressed the need to focus on risk factors, rather than low value.

Participants generally supported the harmonisation of licensing modalities. Some participants emphasised the need to streamline licensing timelines, with suggestions that the Regulation should contain provisions setting targets for average processing times.

6. Convergence of catch-all controls

Participants debated the options for greater convergence of catch-all controls through harmonisation of the notion of catch-all controls, the establishment of an EU catch-all database and the strengthening of mandatory consultation mechanisms to ensure their EU-wide application. While some participants expressed support for such evolutions, others raised concerns as to possible unintended consequences e.g. as more robust consultation procedures might delay decisions and increase administrative burden. Representatives of export control authorities encouraged industry representatives to seek assistance from national licencing authorities at early stages of their export project in order to avoid unexpected denials. Participants also debated the merits of applying catch-all controls with respect to human rights

7. Critical re-evaluation of intra-EU transfer controls

Some participants regretted that items listed in Annex IV of the Regulation are still subject to intra-EU controls and asked for its suppression. Participants discussed the options to minimise remaining barriers within the Single Market, including updating Annex IV and/or introducing EUGEAs with possible inclusion of the possibility of intra-EU post-shipment controls. Most participants supported both options, while expressing some concerns about the feasibility of post-shipment controls.

8. Development of an EU export control network

Participants generally and broadly supported Commission suggestions to develop structured exchanges of information among export control authorities, cooperation with enforcement agencies, enhanced synergies between security-related trade control instruments as well as capacity-building (training) and export control outreach.

9. Private sector partnership

Participants discussed the development of a partnership with the private sector to enhance the security and resilience of global supply chains. Mostly, participants supported the introduction of common requirements and standards for international compliance programmes (ICPs), possibly in the form of guidelines. Participants recognised that compliance is an obligation for all operators and some industry associations stressed that even small companies implement ICPs and requested authorities to take this duly into account when assessing licence applications. Some participants however expressed concern regarding the introduction of EU-wide standards for company compliance, as they observed that ICP requirements differ for various business areas and may be costly for SMEs.

Most participants subscribed to the proposed options for greater transparency and outreach to the private sector and academia.

10. Global convergence

Participants supported efforts to encourage greater convergence of export controls with third countries. Possible actions include information exchange, end-use monitoring as well as mutual recognition among competent authorities.

THE 2015 EXPORT CONTROL FORUM

The Export control policy review
ensuring security and competitiveness in a changing world

Monday, 7th December 2015 | 10:00 – 17:30
CCAB – Congress Centre Albert Borschette
1049 Brussels, Rue Froissart 36

Presidency of
the Council of the
European Union .

GRAND DUCHY OF
luxembourg

European
Commission

The Export Control Policy Review

1
- 2003 WMD Strategy & European Security Strategy
- 2008 New Lines of Action

2
- Regulation (EC) No 428/2009
- 2011-2012 Green Paper consultation (COM(2011)393) & SWD(2013)7

3
- 2013 Report to European Parliament & Council (COM(2013)710)
- 2014 Communication from the Commission (COM(2014)244)

4
- 2015 Impact Assessment & non-regulatory actions

5
- COM legislative proposal and legislative process (2016 -?)

2015 Impact Assessment – Key steps

1. **DATA COLLECTION PROJECT (Dec. 2014-Aug. 2015)**

   Project team: SIPRI and Ecorys

   ▪**Action 1: Development of methodological approach to collect data and information**

   ▪**Action 2: Analysis of baseline scenario**

      2a) Collect information and data on structure and
       performance of directly affected sectors
      2b) Collect and analyse data/information
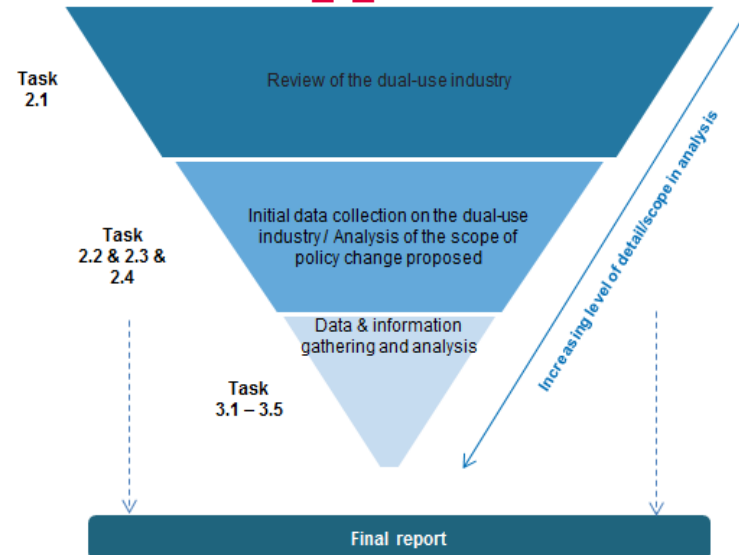   re. impact of current controls and
      related problems

   ▪**Action 3: Analysis of review options 1-5**

2. **PUBLIC CONSULTATION (July-October 2015)**

3. **IMPACT ASSESSMENT REPORT (Dec. 2015)**

4. **REGULATORY SCRUTINY BOARD (Jan-Feb. 2016)**

Overall methodology: staged approach

Task 2.1	Review of the dual-use industry
Task 2.2 & 2.3 & 2.4	Initial data collection on the dual-use industry / Analysis of the scope of policy change proposed
Task 3.1 – 3.5	Data & information gathering and analysis

Increasing level of detail/scope in analysis

Final report

Export Controls in an Evolving World

EXPORT CONTROL REGIME

Security Environment

- Increasing **WMD proliferation** challenges
- Globalisation and **transnational security** threats
- Increasing relevance of **non-state actors**

Technological and Scientific Environment

- Easier and faster **spread of technologies**
- **Cyber-security**
- Potential abuse of "open" **scientific research**

Economic Environment

- Rise of **global value-chains** in DU industries
- Blurred **civilian-military** duality
- Potential **distortions of competition**

Our Priorities: why we need to review the EU export control system?

1. Adjusting to the evolving security environment

2. Promoting a global level-playing field

3. Developing an Effective and Competitive EU Export Control Regime

4. Effective and consistent Implementation and Enforcement

Towards a 'Human Security' approach?

Recognising that security and human rights are interlinked and that the proliferation of cyber-surveillance technology poses a risk for human rights and for international security.

"Dual-Use" →

- Definition of 'dual-use item'
- Inclusion of human rights as a control criterium
- Possibility of EU autonomous controls.

Cyber-surveillance →

- Due diligence
- Multilateral / EU list
- Targeted catch-all control

New technologies and 'Smart security'

For an EU Technological Reaction Capacity to respond to rapid technological and scientific developments

Dialogue with operators

- *Yearly updates to the control list*
- *voluntary technical consultations ("technical advisory committees")*
- *Guidance for exporters*

Dialogue with partners

- *EU coordination and contributions to regime discussions*
- *Bilateral dialogues with key partners*

Modernised control modalities

Drawing lessons from experience and tackling illicit trade

Legal upgrades ➜

- *Definition of exporter*
- *Determination of the competent authority*
- *Jurisdiction clause*

Harmonised controls ➜

- *Brokering controls*
- *Transit controls*

A strategy for 'immaterial control'
Meeting the challenge of intangible technology transfers in the digital age

Technology transfers →
- Clarification of key legal provisions
- Control of technical assistance
- EUGEA for intra-company technology transfer

Dual-use research →
- New regulatory approach to the control Dual-use research
- Support actions - guidance, awreness-raising, outreach

Optimisation of licensing (1)

Promoting a shift towards open licensing to minimise delays, costs and distortions of competition

Harmonised licensing processes

- Definition(s) and harmonisation of conditions and requirements for licenses?
- Transparency on licensing timelines

Open licensing processes

- Regular review of NGEAs
- New EUGEAs
- Delegation of competence for EUGEAs

Optimisation of licensing (2)

Promoting a shift towards open licensing to minimise delays, costs and distortions of competition

New EUGEAS

- Cryptography
- Low value shipments
- Specific dual-use items (e.g. frequency changers)
- Intra-company transfers
- Intra-EU transfers
- Large projects

Convergence of catch-all controls
For consistent and clear catch all controls through the EU

Convergent catch-all controls →

- Notion of catch-all controls (items, destinations/end-users)

- Mandatory consultation process

- EU-wide application

- Transparency and information exchange (database, watch lists etc)

Convergence of catch-all controls
For consistent and clear catch all controls through the EU

Convergent catch-all controls

- Notion of catch-all controls

- Mandatory consultation mechanism

- EU-wide application

- Transparency and information exchange (database, watch lists etc)

Re-evaluation of intra-EU transfers
Minimise trade disruptions within the Single Market while monitoring most sensitive items

Annex IV

- Updated list of most sensitive items

Open licensing process

- EUGEA for intra-EU transfers
- Conditions and requirements to include the possibility of post-shipment verification

EU export control network

Develop the human and IT resource base supporting the implementation of controls

Structured information sharing →

- Information sharing (licences, catch-all, enforcement etc)
- Common risk assessment tools

Trade controls Synergies →

- Development of a common IT platform based on Dual-Use Electronic System
- Regulatory synergies for strategic trade controls

Operational cooperation →

- Operational actions – "Pool of experts", joint operations e.g. with customs
- Targeted EU-wide training for officials

Private Sector Partnership

Develop a partnership with the private sector to enhance the resilience of the global supply chain

More flexibility and clarity →

- Additional EUGEAs

- More transparency, information-sharing and outreach

More responsibility and capacity →

- Internal compliance programme requirements and standards
- Suspicious transactions reporting
- Support tools: guidance, electronic licensing, AEO-ICP convergence

Global convergence

Promote the convergence of controls and a global level-playing field

Dialogue with partners →
- Information exchange & regulatory convergence
- End-use monitoring and mutual recognition of decisions
- External cooperation and outreach

Multilateral regimes →
- Enhance EU contributions to multilateral export control regimes
- Promote EU participation in the regimes