The modernisation of EU export controls: a long journey towards a new EU Export Control Regulation

- Commission Proposal: September 2016

- EP Position: January 2018

- Council Position: June 2019

- Trilogues: Oct. 2019 - Nov. 2020 – final trilogue on 9.11.2020

- Informal text of new Regulation publicly released on 18.11.2020

- Adoption and publication scheduled in May 2021

- Entry into force 90 days later

- Preparations for the implementation of the new provisions start NOW!

The modernisation of EU export controls: a systemic shift combining two complementary dimensions

- The new Regulation represents a **comprehensive "system upgrade"**: virtually all provisions of the Regulation are amended in order to enhance the efficiency and/or the effectiveness of controls. This includes *updated* definitions and control parameters, harmonisation, simplification and digitalisation of licensing, enhanced information-sharing, and cooperation with third-countries. The "system upgrade" also introduces *new* rules on transparency, enforcement, industry outreach and an EU training programme.

- The new Regulation introduces a basis for **EU autonomous controls** allowing the EU to make its own decisions regarding human rights controls on cyber-surveillance technologies, and for a coordination of national controls on emerging technologies.

EU autonomous controls: "human security controls" and "emerging technology controls"

- The "human security" dimension: an EU mechanism for **human rights end-use controls on cyber-surveillance exports** (Art. 2.21, Art. 4a).

  - The mechanism follows a "bottom-up" approach reflecting Member States' decisions to control non-listed cyber-surveillance items for human rights considerations

  - The mechanism provides for the introduction of controls through a mandatory and prescriptive consultation procedure, resulting in the publication of an "EU Watch List" of items and destinations subject to control

  - The mechanism is supported by due diligence requirements for exporters. EU Guidelines will be developed.

- The new Regulation also provides for a **coordination of national controls on emerging technologies** (Art. 8a) and their publication in the Official Journal

The "system upgrade": updated definitions and key control parameters

- Key **definitions are updated** e.g. "export/re-export", exporter, transit etc

- New **definitions are introduced** e.g. "supplier of technical assistance", "cyber-surveillance items", "internal compliance programme", "essentially identical transaction" etc

- Key **control parameters are clarified** e.g. concerning the application of controls with respect to natural persons (incl. researchers), the determination of the competent authority, the compliance requirements for companies etc

- **Assessment criteria** are clarified e.g. with respect to terrorism (Art. 8)

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The "system upgrade": harmonisation, simplification and digitalisation of licensing

- **Harmonisation of licensing parameters** e.g. new definition for "large project authorisation", max. licence validity (2y), end-use statements, ICP requirements etc

- **New EU General Export Authorisations** (EUGEAs) for Intra-group Technology Transfers (EU007) and for Encryption (EU008)

- **Harmonisation of EUGEA basic conditions and requirements** (registration, notification and reporting under EUGEAs and delegation of competence to the Commission to amend destinations and items in Annex I and II in consideration of technology and political developments

- Development of **electronic licensing** and interconnection of IT systems

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The "system upgrade": controls on services – brokering and technical assistance - and transit

- Brokering, technical assistance and transit controls are updated and harmonised for listed items and WMD proliferation and military end-use in embargo countries.

- The scope of **brokering controls** is clarified with respect to foreign nationals providing brokering services from the territory of the EU

- The scope of **technical assistance** controls is clarified/extended with respect to foreign nationals providing services from the territory of the EU, the provision of service by EU nationals from a third country and transfers of technology towards third-country nationals in the EU

- Controls on **transit** are clarified e.g. with respect to natural persons, entities not resident or established in the EU, transhipment etc

The "system upgrade": enhanced information-exchange and enforcement

- The new Regulation provides for the development of "**direct cooperation and exchange of information"** between MS and COM

  - ➢ Expanded information-exchange on licensing e.g. licensing and export data, EUGEA users, application of assessment criteria, internal compliance programmes etc

  - ➢ Information-exchange in compliance with data protection standards and security or commercial confidentiality requirements

- The new Regulation provides for the introduction of **information-exchange and inter-agency cooperation on enforcement**, incl. the creation of an Enforcement Coordination Mechanism and the development of an EU training programme

- Role of the Dual-Use Coordination Group, development of dedicated IT tools and interconnection of IT systems

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The "system upgrade": transparency and outreach to industry

- The new Regulation prescribes **high transparency requirements** (Art. 24.2), including the publication of an annual report with detailed licensing data - EU and Member States, (types of) items, destinations - and other data regarding the administration and enforcement of controls)

- The new Regulation promotes outreach and the development of a "**Partnership with the private sector**", e.g. through the development of guidelines (e.g. Art. 24.1), the setting of joint Technical Expert Groups (Art. 21.1), the clarification of key requirements for due diligence and internal compliance programmes etc

The "system upgrade": cooperation with third countries and the global convergence of controls

- The new Regulation mandates the EU to ramp up **cooperation with third countries** in order to promote the global convergence of export controls and promote internatonial security and a level-playing field.

- The new Regulation points to the development of « Export control dialogues » with partners, capacity-building and outreach to third countries and multilateral export control regimes (MECRs)

Additional information:

DG TRADE website on Dual-Use items: https://ec.europa.eu/trade/import-and-export-rules/export-from-eu/dual-use-controls/

Press-release on the new Regulation dealing with Dual-Use items: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2045

Video on the new Regulation on DG TRADE's Twitter account (@Trade_EU): https://twitter.com/Trade_EU/status/1326064712824610816

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