

**UNICE COMMENTS ON THE REFORM OF  
EXPORT CONTROLS ON DUAL-USE GOODS**

**Developments in controls on dual-use goods**

The current geopolitical instability, threats linked to international terrorism which are now difficult to predict in terms of timing or location, together with the need for a global approach to security are prompting states to pay **closer attention to export controls on dual-use goods**. European business shares and gives priority to this concern. It is fully aware of its responsibility in this area and of the growing risks linked to non-conformity with common rules.

In recent years the practical arrangements for these controls have been undergoing considerable change<sup>1</sup>. Among other things, these are due:

**at geopolitical level, to:**

- the emergence of new threats, on a geopolitical chessboard undergoing profound change; controls no longer relate only to the risks linked to arms production, notably weapons of mass destruction, but to a wider concept of security (organised crime, territorial crises that flare up from time to time, destabilisation of financial markets, computer attacks, etc.);
- the appearance of new targets, which are no longer only non-democratic or “rogue” states but terrorist groups, mafias, sects, diverse trans-national movements, etc.;
- the consequent need to focus more on controlling uses and end-users and less on the technological sophistication of the goods;

**at economic level, to:**

- rapid globalisation of trade, hence accompanied by globalisation of technology dissemination;
- changes in the scope of controls, which involves paying closer attention to intangible goods and trade in an intangible form but also complex trading methods such as brokerage;
- increased use of dual-use goods and technologies, including in weapons systems;

**at institutional level, to:**

- the change in the institutional framework for controls linked to developments in the powers of the nation-state to the benefit of regional or international bodies. Accordingly, controls on dual-use goods are increasingly becoming a responsibility for the EU, but they are handled differently by EU Member States resulting in disparate export control systems;

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<sup>1</sup> See UNICE white paper: “Export controls on dual-use goods” (November 2000).

- maintenance of controls based on the concept of territorial borders, whereas the global economy is each day increasingly part of a trans-national context of trade globalisation and global information transmission networks;
- the emergence of powerful NGOs active in this area and imposing new requirements on “policy-makers”;
- the possible development of the “current regimes” (Wassenaar Arrangement, Missile Technology Control Regime-MTCR, Nuclear Suppliers Group-NSG, Australia Group, Chemicals Weapons Convention-CWC) towards a single body whose decision-making rules based on unanimity could be called into question, which in turn could favour a particular group of countries;
- the preponderant role played by the United States in this area because of its position as a political, economic and technological “hyper-power”;
- the extra-territoriality of American regulation, application of which is becoming predominant for some European and Asian companies, at the risk of reducing the impact of, or even disregarding, their own national rules.

### **European business proposals**

In UNICE’s opinion, these developments justify **a far-reaching reform of export controls policy** by the public authorities. This initiative must be both overarching and forward-looking, and defined in close liaison with the business community, which should be the actor for change. More than that, UNICE believes that a true partnership needs to be developed with business in order to put in place a more targeted and effective controls system without holding back legitimate trade, more than ever the engine of global economic growth, while achieving the security objectives.

This new controls policy must help to consolidate and favour the development of high-tech industries so that Europe retains mastery over the technologies of sovereignty.

### **Actions to raise awareness among companies**

Awareness-raising and increasing responsibility, rather than surveillance and punishment, must be the main planks of this reform. The public authorities in each EU Member State and the European Commission must openly and clearly make known the strategic importance they attach to compliance with this “export self-control”. This political wish should be made a reality notably through a true programme of awareness-raising and increasing responsibility among economic players, targeting more particularly company directors, on the risks of technology diversion to a player identified as sensitive (person, group or country), self-evidently for the country and the company concerned but above all for global security.

### **Actions to train economic players**

- Proactive action to disseminate information on procedures, lists and jurisprudence, accompanied by assistance in practical implementation. A knowledge of potentially “risky” customers and publication – even unofficial – of lists of countries regarded as sensitive should complement this framework, controls relating henceforth more to the country or sensitive end-user than to the technology or goods transferred.
- It should be noted that, for reasons of legal certainty, companies need clear instructions and cannot be content with verbal responses on a case-by-case basis.

## **Concertation structures**

- Bearing in mind the considerable changes in the controls framework described above, it is essential that the various administrations concerned give thought to the new developments in controls. To improve the effectiveness and ensure the relevance of this process, exporting companies must be involved, since it will then be up to them to come to grips with borders which are increasingly virtual.
- Export controls should be re-examined in a concertation structure, which must propose procedures and formalities suited to the new constraints on controls but also to new management techniques, and must not undermine companies' competitiveness. This structure could bring together the European Commission in cooperation with EU Member States, with business and experts from academia. Its work must be guided to define threats and find workable measures for companies, taking account of the requirements of SMEs – whose capacity for dealing with all aspects of controls is limited – as well as requirements linked to the increasing decentralisation of large industrial groups.
- Close coordination between public authorities and operators must also contribute to the emergence of a genuine commercial and marketing strategy for controls. This approach seems to be widely deployed in the strategies developed by our American partners, integrating the political, diplomatic, economic and industrial dimensions of these issues. In this regard, the concept of “advocacy centre” is exemplary.
- Involvement of companies in the process of preparing procedures and lists through an institutionalised and permanent mechanism. The existence of a “permanent” structure will improve the quality of work on the substance and the relevance of the proposals submitted by the business community, ensuring the appropriate balance between controls and companies' operations. Such cooperation will use the expertise of the EU Member States within the specific control categories and thus ensure a larger impact for the EU on international control regimes.

## **Improved coordination of EU export controls**

- UNICE believes that the European Commission should play a more active role in the field of export controls and thus extend its activities and resources appropriately in the area. This must happen in close cooperation with the EU Member States and business. Work should be developed towards a common EU approach to create a level playing-field in the EU.
- However, any reinforced coordination within the EU must avoid creating additional administrative burden over and above what already exists.
- EU Regulation 1334/2000 has to be applied in the same way throughout the EU. Improved coordination can be carried out through joint initiatives with the European Commission organising courses and seminars, and preparing uniform information material and websites.
- The Commission and the Member States should increased coordination to speak with one voice for the revision of lists and new initiatives in international control regimes.

- Catch-all decisions should be further harmonised. It could also be relevant to establish common guidelines for elements which the exporters should pay attention to, such as US "know your customer" and "red flags".

### **Long-term perspective**

Lastly, in the longer term, there is an ongoing discussion within the business community on the concept of "company certification" which could be of interest for some companies. This concept proposes that the participating companies complete a process of voluntary certification and therefore receive specific benefits in export control procedures.

However, the company certification concept needs further discussion within the business community, before it can be pursued as a proposal from European Industry. In particular, discussion must focus on what specific benefits would result from a certification, and it has to be ensured that the certification procedures do not place any additional burden on companies. Furthermore, non-participants must not be discriminated against, as there are many exporting companies which may not be willing to undergo a certification process.

UNICE looks forward to pursuing the debate on these issues with the European Commission and all interested parties.

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