



SUBJECT: BusinessEurope’s Key points for Communication on Export Controls on Dual-Use Items

BusinessEurope recognises the need to modernise the EU Export Controls regime in order to better adapt it to today’s reality. What is important in this context, however, is that the new rules strike the right balance between trade and security policy objectives.

We would like to present in the table below a few key comments on the legislative proposal and are ready to further contribute to the debate.

<u>Issue</u>	<u>Concerns / Recommendations</u>
Scope and Definitions	<p>The scope and the mission of the regulation should concentrate on non-proliferation, while new challenges related to the risk of proliferation should be clearly identified.</p> <p>Clear definitions are essential to ensure the effective implementation of the EU export controls regime. It is also important to make sure that definitions correspond accurately to the Annexes of the Regulation in order to avoid different interpretations on the coverage of the Regulation. This effectively means that we need to clarify the controlled products are those explicitly referred to in the control list.</p> <p>Critical cyber surveillance goods should be described more precisely and certain applications should be explicitly excluded. For instance, public digital infrastructure also depends on data monitoring and data analysis. These applications do not bear the risk of violating human rights. On the contrary, they contribute to supplying security for the whole population. Therefore, exports of smart traffic concepts, green infrastructure and integrated health solutions should not be restricted.</p>
“Catch-All” controls	<p>It is important to recognise the efforts of the proposal to improve the administration of “catch-all” controls, including on the time required to obtain a license and the implementation of the Regulation at national level. It is our view, however, that the consultation system among Member States described in article 4 IV should be restricted to exchange of information only on cases of denials.</p>



	<p>At the same time, it is also crucial to highlight that the particular language used in the proposal, introducing human rights criteria under the “catch-all” controls does not guarantee an effective implementation by all parties concerned of control regimes.</p> <p>Therefore, the new rules on human rights and terrorism should be removed from Article 4. At the same time, we believe that the risk of human rights violations can be effectively addressed under Article 8 of the Regulation. This already gives Member States the possibility to prohibit or impose authorisations on non-listed items for human rights considerations. We therefore support that a workable solution – one that could achieve the right balance between the protection of human rights and exporters’ obligations – can be found under the legal basis of Article 8.</p> <p>For instance, more clarity is required on the concept of due diligence. The concept of due diligence should by no means be confused with the concept of knowledge. A vague notion of human rights due diligence would violate common European rule of law values, such as the principle of <i>nullum poena sine lege certa</i>, enshrined in Member States’ constitutions.</p>
<p>Autonomous EU list</p>	<p>The proposal is creating a unilateral EU list on cybersurveillance items. While generally supporting the idea of a list-based approach and recognising the need that the export of certain cyber surveillance technologies should be controlled more strictly, it is important to note that this measure can harm the competitiveness of EU companies, as our competitors are not following our pace. Furthermore, it could also result in more unilateral decisions in the future, leading to extensive divergences between the EU and global regimes. It is worth noting that decisions by the four international arrangements (the Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), the Nuclear Supply Group (NSG) and the Australia Group) on updating the control lists are taken on a yearly basis. Maintaining a global level-playing field is absolutely crucial.</p>
<p>Large projects</p>	<p>Large project authorisations should be maintained in the Regulation. The category of large projects is by no means limited to the nuclear field, but rather corresponds to a broader spectrum of industries, such as energy in general, chemicals</p>



	<p>and telecommunications. They also involve large companies and SMEs.</p> <p>Furthermore, the purpose of the addition of large project authorisations is to streamline procedures for both the exporter and the licencing authority.</p>
New EUGEAs	<p>BusinessEurope welcomes the introduction of new EUGEAs, including on encryption, intra-company transmission of software and technology as well as low value shipments. The new EUGEAs will help reduce administrative burden for companies but, most importantly, without inhibiting the effective implantation of export controls.</p> <p>With regards to intra-company transfers, it is indeed important to clarify that the EUGEA will apply to transfers between companies that are part of the same group of undertakings.</p> <p>However, the envisaged reporting mechanisms should be deleted, as companies using EUGEAs already need to have a compliance system in place. Furthermore, in certain cases, companies' compliance systems and records are also monitored through audit controls.</p> <p>BusinessEurope also supports the new EUGEA on low value shipments, as this measure will benefit SMEs in particular.</p>
Validity period of authorisations	<p>BusinessEurope welcomes the extension of the validity period for individual export authorisations and global export authorisations. We perceive this as a move that will facilitate businesses in their operations as it will limit burdensome bureaucratic processes.</p>
Annex IV	<p>BusinessEurope is in favour of a less rigid approach to be introduced for the most sensitive products, such as monitoring, or a risk-based approach. In this context, we support a three-step approach which includes (1) assessing the risks of the currently listed items in Annex IV, (2) carrying out a delisting exercise and (3) introducing General Export Authorizations for cases under annex IV.</p>
Extraterritoriality	



	<p>The Commission’s proposal introduces the concept of the extraterritorial application of the Regulation namely under provisions on brokering and technical assistance. Although we understand the rationale behind this approach, the EU should take into consideration the negative effects that EU businesses often face as a result of similar approaches followed by other jurisdictions. Alternative solutions could be explored, including an anti-circumvention clause.</p>
<p>Guidelines</p>	<p>Guidelines cannot replace the necessary workover of the Regulation. Definitions and concepts need first and foremost be clarified in the Regulation itself. Moreover, it is important that the process of the preparation of the Guidelines that will be accompanying the Regulation is transparent and inclusive.</p> <p>European companies have valuable experience and expertise that they will voluntarily share and contribute to making the EU Regulation more effective and efficient. It is also essential that the Guidelines are ready and available as soon as possible, before the entering into force of the Regulation.</p>
<p>Partnership with stakeholders</p>	<p>The proposal envisages closer cooperation between European Institutions, Member States and other stakeholders, including business. We welcome these initiatives and we believe that they should become formalised under a permanent platform, instead of taking place in an ad hoc manner, as is the current practice. This would improve and harmonise the implementation of the Regulation within the EU.</p>
<p>International Cooperation</p>	<p>The proposal also includes an international cooperation component, which gives the European Commission the possibility to negotiate mutual recognition agreements in the field with third partners. In principle, BusinessEurope welcomes the idea and would like to know more about how this will work in practice and how business will be involved.</p> <p>It is also important to ensure the continuation and reinforcement of existing dialogues on Export Controls that the EU has launched with trading partners, within the four international Export Control regime and beyond.</p>