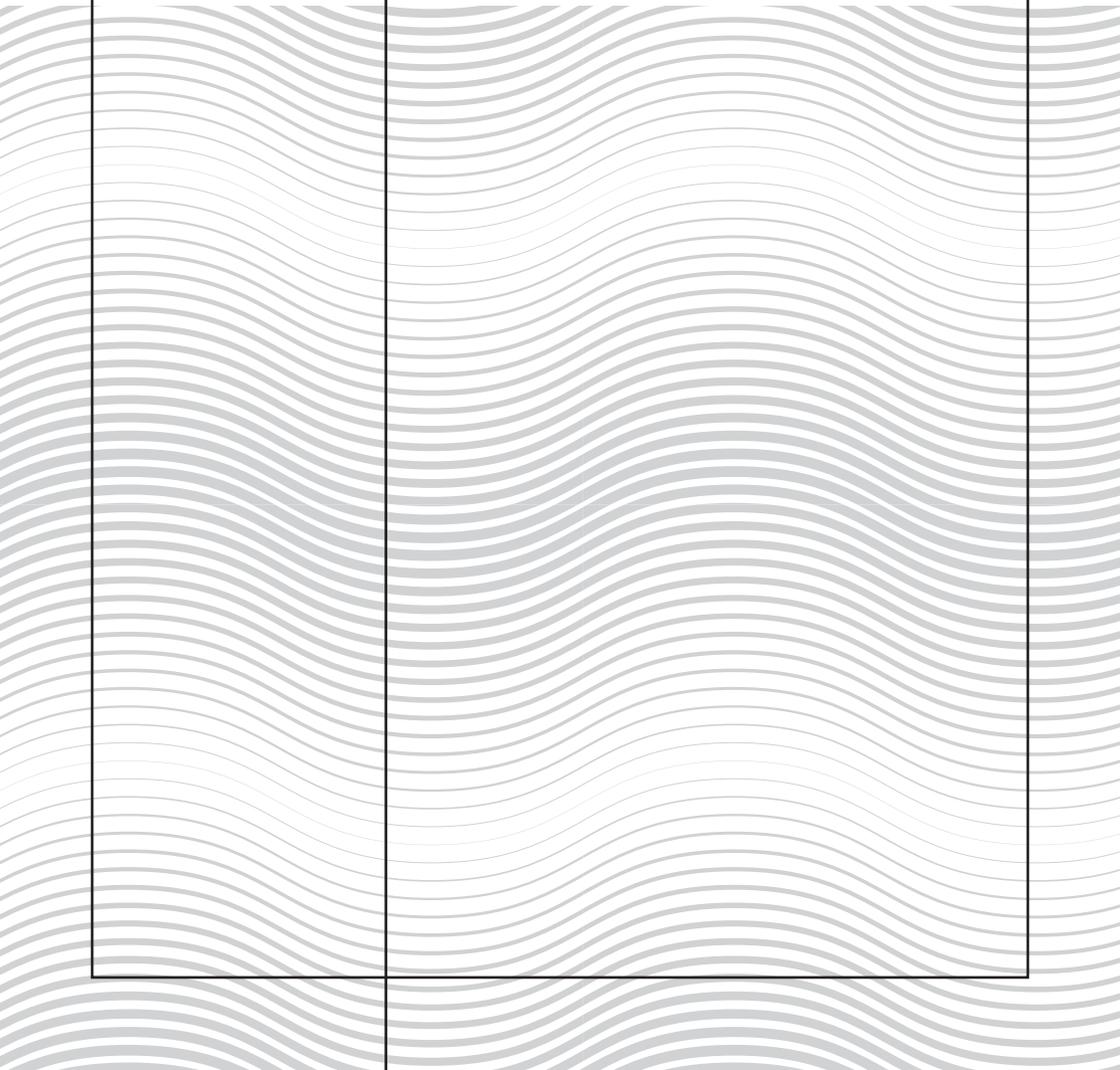


**Part
3.**

**Trade and
security
in the outreach
activities**



Looking for the correlation between EU international trade policy and its dual-use export controls outreach programme: the WMD clause coherence

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This contribution aims at identifying a correlation between the European Union (EU) international trade policy - limited in this contribution to mixed agreements between the EU and third countries - and the dual-use export controls outreach programme implemented by the EU, called *P2P (Partner to Partner) export control programme for dual-use goods* (P2P).¹

In a first place, preliminary definitions will be set out to clarify what it is meant by mixed agreements and to identify the geographical scope of both variables: EU mixed agreements signed/being negotiated worldwide and third countries part of the EU P2P programme.

It will follow and an analytical comparison which, by overlapping the geographical scope of the two variables, will look for countries part of the P2P which have also signed a trade agreement (TA) with the EU. At this stage of the analysis, the inclusion of a

1 P2P is the EU Outreach Export Control programme, started in 2004 and renamed P2P only in February 2016. The programme is divided into three pillars: Dual-Use Export Controls programme; Council Working Group on Conventional Arms Exports Outreach Programme; and the Arms Trade Treaty Outreach Project. For more information, please see the *EU P2P Export Control Programme* official website, available on: <https://export-control.jrc.ec.europa.eu>.

WMD non-proliferation clause in these agreements will be inquired as proof of coherency between EU international trade policy and export controls priorities. The inclusion or non-inclusion of the WMD non-proliferation clause, as well as the date of the agreements will be considered as tools seeking to identify the underlying logic driving the (co)relation between EU international trade and its dual-use export controls programme.

The last part of the paper will seek to test the correlation in practice, by comparing the outcomes of the P2P in two different countries, Kazakhstan and Jordan.

The final aim of the analysis is the identification of the independent variable, which means to answer the question: is EU international trade policy serving dual-use export controls' objectives or is it the opposite?

Finally, some concluding remarks will make some considerations on the nature of the relation between trade and export controls and will advance some advises for ways forward.

1. PRELIMINARY DEFINITIONS

The conclusion of trade agreements with third countries is one of the main and most important parts of the EU external trade policy.

According to the content of the agreement and, by consequence, the procedure for negotiation and approval, it is possible to distinguish between two categories of EU international trade agreement:

1. Union-only agreements;
2. Mixed agreements.

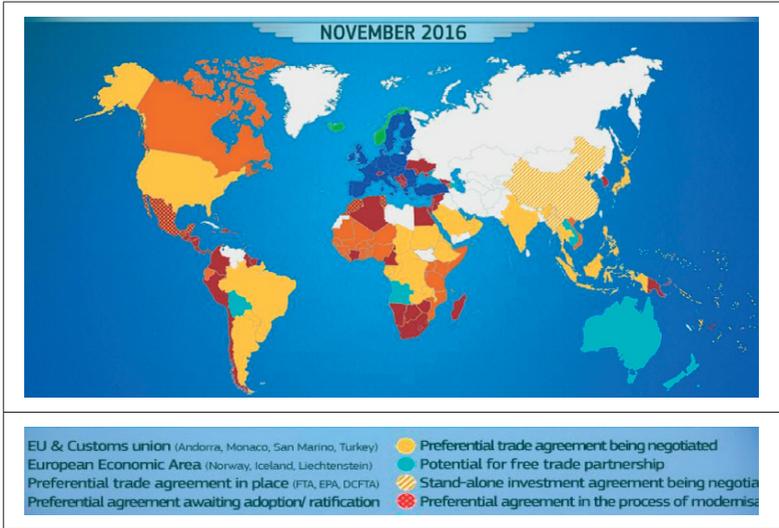
While Union-only agreements cover matters following under EU exclusive competences (e.g. competition policy, trade dispute settlement mechanisms, technical barriers to trade, etc.), mixed

agreements include also elements which are not of EU exclusive competence, notably political issues falling within Common Foreign and Security Policy (CFSP).

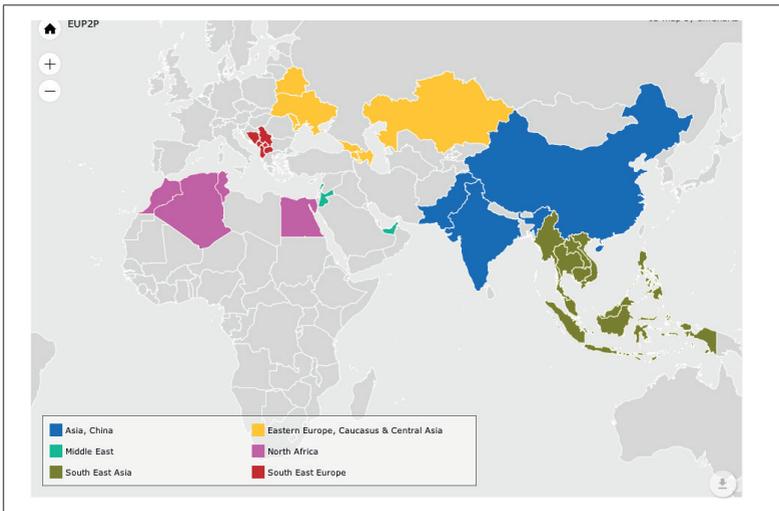
As for procedural rules, while Union-only agreements are adopted by the Council usually by qualified majority vote, mixed agreements, as established in Article 218 of the Treaty on the Functioning of the European Union, require the consensus in the Council, the approval by the European Parliament and the ratification by all Member States, following their constitutional procedures.

Every EU agreement including conditionality clauses, such as the human rights clause or the WMD non-proliferation clause is a mixed agreement. Given the necessity to inquire on the inclusion/exclusion of the WMD non-proliferation clause in agreements signed with countries part of the P2P programme, this paper will deal only with mixed agreements. It is not the objective of this contribution to make a complete overview on the number and nature of all the international agreements signed by the EU, being the focus of this brief analysis limited to agreements signed with countries part of the P2P programme. However, it could be useful to have a visual idea of EU trade agreements reach, which is worldwide, as shown in the map below.²

2 Source: European Commission, DG Trade. Available on http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149622.pdf.



As for the geographical scope of P2P export control programme for dual-use goods, it involves 32 countries, divided into six main regions:



Asia-China	China
	India
	Pakistan
Middle East	Jordan
	Lebanon
	United Arab Emirates
South East Asia	Brunei
	Cambodia
	Indonesia
	Laos
	Malaysia
	Myanmar
	Philippines
	Thailand
	Vietnam
Eastern Europe, Caucasus and Central Asia	Armenia
	Azerbaijan
	Belarus
	Georgia
	Kazakhstan
	Moldova
	Ukraine
North Africa Egypt	Algeria
	Morocco
	Tunisia
South East Europe	Albania
	Bosnia H.
	Kosovo
	Macedonia
	Montenegro
	Serbia

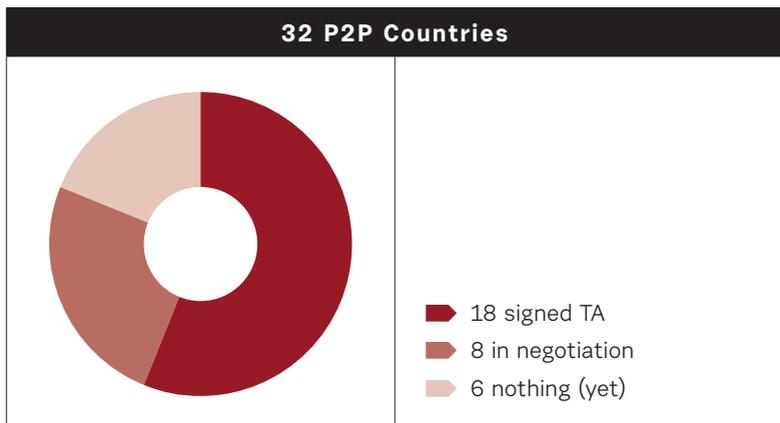
2. ANALYTICAL COMPARISON

Considering the 32 countries part of the P2P, the analysis aims at identifying how many of these countries signed a trade (mixed) agreement with the EU and among the considered agreements, how many contain the WMD non-proliferation clause.

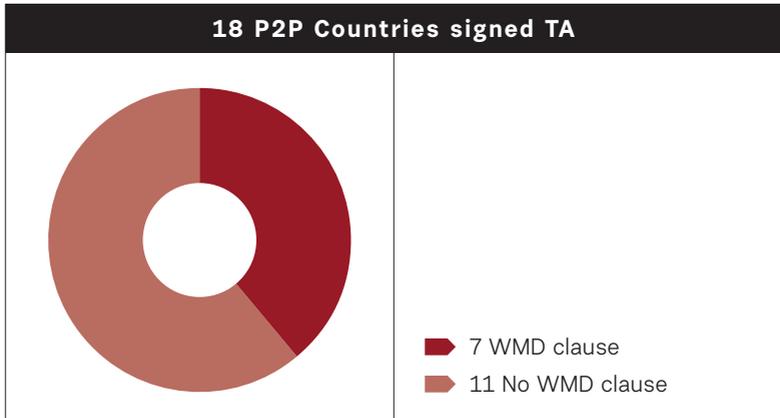
It comes out that 18 out of 32 P2P countries signed a trade agreement with the EU: Albania, Algeria, Armenia, Azerbaijan, Bosnia Herzegovina, Egypt, Georgia, Jordan, Kazakhstan, Kosovo, Lebanon, Macedonia, Moldova, Montenegro, Morocco, Serbia, Tunisia and Ukraine.

As for the remaining 14 countries, 8 out of 14 are in negotiation phase (China, India, Indonesia, Malaysia, Myanmar, Philippines and Thailand) and for the 6 remaining countries, discussions have not started yet, at least officially (Belarus, Brunei, Cambodia, Laos, Pakistan and United Arab Emirates).

The situation of the 32 P2P countries a regard to the signing of trade agreements (TA) with the EU is summed up the graph below.



Within the 18 trade agreements signed, only 7 contain a WMD non-proliferation clause: Albania (May 2006), Montenegro (April 2010), Bosnia Herzegovina (June 2015), Ukraine (January 2016), Kazakhstan (April 2016), Georgia (July 2016) and Moldova (July 2016).



Despite the fact that 11 agreements do not contain any WMD non-proliferation clause, it is worth to consider these agreements by paying attention to the date of their entry into force: Algeria (Euro-Med A. 2005), Armenia (Sept. 1999), Azerbaijan (September 1999), Egypt (June 2004), Jordan (May 2002), Kosovo (April 2016), Lebanon (March 2003), Macedonia (April 2004), Morocco (March 2000), Serbia (September 2013) and Tunisia (March 1998).

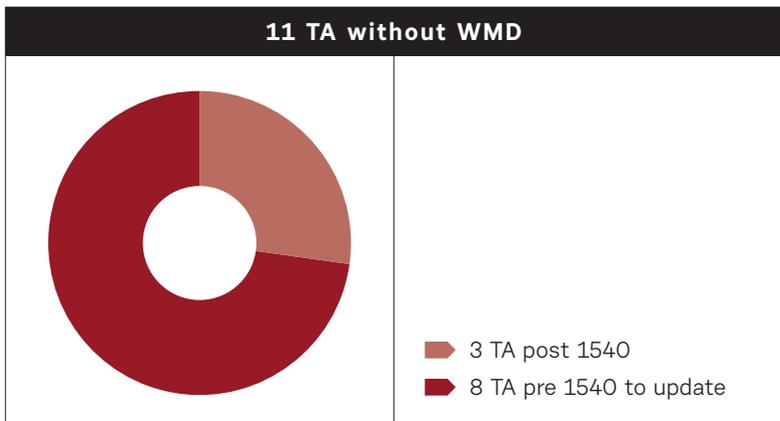
It is quite interesting to remark that 8 out of 11 agreements, which do not contain any WMD non-proliferation clause, entered into force before the entry into force of the United Nations Security Council Resolution 1540 of 28 April 2004 (UNSCR 1540).³

Indeed, Resolution 1540 acted as a watershed in the recent history of international relations, especially for dual-use items export

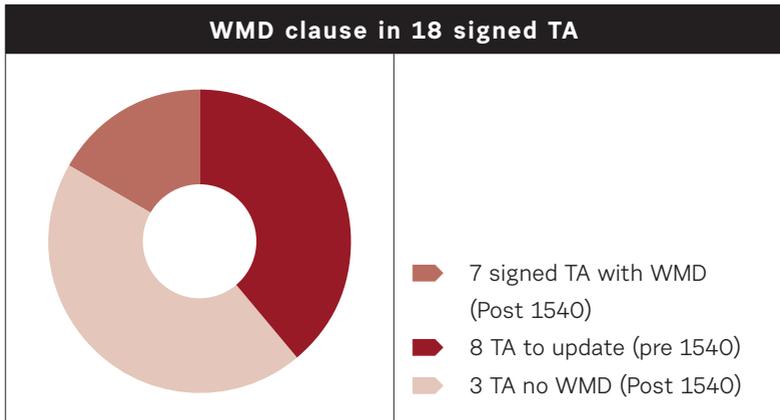
3 United Nations Security Council Resolution 1540, S/RES/1540 (2004), 28 April 2004. Available on: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1540%20\(2004\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1540%20(2004)).

controls. It can be argued that the implementation of export controls for security reasons became an issue after the entry into force of the resolution. Furthermore, given the legal force of the resolution, adopted under Chapter VII of the United Nations Charter, a sort of international duty/right to establish trade controls was born. UNSCR 1540, in fact, imposes binding obligations on all States to

Under this perspective, the non-inclusion of a WMD non-proliferation clause in trade agreements preceding the entry into force of Resolution 1540 is understandable. Following this logic, only 3 out of the 11 agreements represent an exception: Algeria (September 2005), Serbia (September 2013) and Kosovo (April 2016).



This WMD non-proliferation clause logic could be confirmed by the fact that the 8 trade agreements signed before the entry into force of Resolution 1540 are all in negotiation phase to be updated.



It is worth to notice that the wording, as well as the position of the WMD non-proliferation clause in the trade agreement is more or less the same, at least for the agreements analysed in this paper.

As for its position in trade agreements, the clause is always included under the political dialogue section, under a provision which varies from article 8 to article 11 (see below).

An example on the wording of the WMD non-proliferation clause is provided below. (From the Association Agreement between the EU and Georgia, entered into force on July 2016)⁴

⁴ ASSOCIATION AGREEMENT between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, *Official Journal of the European Union*, OJ L 261/4 of 30/08/2014.

ARTICLE 10

Weapons of mass destruction

1. The Parties consider that the proliferation of weapons of mass destruction (WMD) and their means of delivery, both to State and non-State actors, represents one of the most serious threats to international peace and stability. The Parties therefore agree to cooperate and to contribute to countering the proliferation of WMD and their means of delivery through full compliance with, and national implementation of, their existing obligations under international disarmament and non-proliferation treaties and agreements, and other relevant international obligations. The Parties agree that this provision constitutes an essential element of this Agreement.
2. The Parties furthermore agree to cooperate and to contribute to countering the proliferation of WMD and their means of delivery by:
 - (a) taking steps to sign, ratify, or accede to, as appropriate, and fully implement, all other relevant international instruments; and
 - (b) establishing an effective system of national export controls, controlling the export as well as transit of WMD-related goods, including a WMD end-use control on dual-use technologies, and containing effective sanctions for breaches of export controls.
 - The Parties agree to address these issues in their political dialogue.

Trade agreements pre-UNSCR 1540 without WMD non-proliferation clause:

1. **Armenia**, Partnership and Cooperation Agreement, 9 September 1999 (Negotiations started in 2015 to enhance the agreement)
2. **Azerbaijan**, Partnership and Cooperation Agreement, 17 September 1999 (Negotiations foreseen to enhance the current agreement, but not scheduled yet)
3. **Jordan**, Euro-Mediterranean Agreement, 1 May 2002 (Negotiations started in 2012 for a DCFTA⁵)
4. **Egypt**, Euro-Mediterranean Agreement, 1 June 2004 (in 2013 dialogues started to enhance the agreement into a DCFTA)
5. **Lebanon**, Interim Agreement, 1 March 2003
6. **Morocco**, Association Agreement, 1 March 2000 (in 2013 launch of negotiations for a DCFTA)
7. **Tunisia**, Euro-Mediterranean Agreement, 1 March 1998 (negotiations started in 2015 to launch a DCFTA)
8. **Macedonia**, Stabilisation and Association Agreement, 1 April 2004

5 DCFTA: Deep and Comprehensive Free Trade Agreement.

Trade agreements post-UNSCR 1540 (with WMD non-proliferation clause + 3 exceptions):

1. **Ukraine**, Deep and Comprehensive Free Trade Agreement, 1 January 2016 and - Association agreement - 29 May 2014: Art. 11.2(b) WMD non-proliferation clause and export controls
2. **Moldova**, Association agreement, 1 July 2016: Art. 9.2(b) WMD non-proliferation clause and export controls
3. **Georgia**, Association agreement, 1 July 2016: Art. 10.2(b) WMD non-proliferation clause and export controls
4. **Albania**, Stabilisation and Association Agreement, 27 May 2006: Art. 8.3 WMD non-proliferation clause and export controls
5. **Bosnia and Herzegovina**, Stabilisation and Association Agreement, 1 June 2015: Art. 10.3(b) WMD non-proliferation clause and export controls
6. **Kosovo**, Stabilisation and Association Agreement, 1 April 2016: No reference to WMD non-proliferation clause nor export controls
7. **Montenegro**, Stabilisation and Association Agreement, 29 April 2010: Art. 10.3(b) WMD non-proliferation clause and export controls
8. **Serbia**, Stabilisation and Association Agreement, 1 September 2013. No reference to WMD non-proliferation clause nor export controls
9. **Algeria**, Euro-Mediterranean Agreement, 1 September 2005: No reference to WMD non-proliferation clause nor export controls
10. **Kazakhstan**, Enhanced Partnership and Cooperation Agreement, 30 April 2016: Art. 11(a) WMD non-proliferation clause and export controls

3. CORRELATION IN PRACTICE: KAZAKHSTAN VERSUS JORDAN

Before entering in the core of the case-studies analysis, it is worth to keep in mind the selection criteria, applied by the EU, to propose countries to be part of the P2P programme.

The first criterion is the relevance of the “targeted” country for the EU security and foreign policy. On this basis, considering EU security and foreign policy priorities is possible to identify a list of potential candidate countries. As example, in the EU Global Strategy⁶, some strategic regions are identified as partners to *further develop human rights-compliant anti-terrorism cooperation* (North Africa, the Middle East, the Western Balkans and Turkey).⁷

The second criterion is the importance of the country as EU trading partner. The more there are trade exchanges between countries, the more these will be willing to cooperate on other policies.

Dealing with a very specific sector of trade that is dual-use goods export controls, the industrial structure of the country, with capacity in trade in dual-use items (as exporter, importer, trade facilitator, trading hub) is very relevant as well.

The above listed criteria are crosschecked with the complementarity to other EU funded projects. In other words, the EU is more willing to cooperate with countries which are already partners/beneficiaries of other EU instruments, such as Instrument for Nuclear Safety Cooperation, the Instrument for Pre-Accession Assistance or other foreign policy instruments.

Last but certainly not least, while looking for partner countries, the EU has to consider the third country’s willingness to cooperate in the area of dual-use export controls.

6 *Shared Vision, Common Action: A Stronger Europe A Global Strategy for the European Union’s Foreign And Security Policy*, June 2016, available on: <https://europa.eu/globalstrategy/en/global-strategy-foreign-and-security-policy-european-union>.

7 *Shared Vision, Common Action: A Stronger Europe A Global Strategy for the European Union’s Foreign And Security Policy*, June 2016, p. 21.

In order to test the correlation, on the basis of concrete results achieved during the implementation of dual-use outreach activities, two countries part of the P2P programme are considered: Kazakhstan and Jordan.

The choice of these two countries as case-studies for this paper is explained by their different status as regard the inclusion of the WMD non-proliferation clause in trade agreements with the EU. The trade agreement between the EU and Jordan was signed before the entry into force of Resolution 1540 and it does not include any provision on the WMD non-proliferation clause, while the agreement with Kazakhstan, being signed after the entry into force of the Resolution, does. The first objective of the correlation test is to inquire if the inclusion/exclusion of the clause in trade agreements makes any difference in terms of results achieved. The second objective of the test is to make an evaluation on the impact of EU's outreach activities in the area of dual-use trade controls.

Kazakhstan and Jordan have both a strategic relevance to the EU, although for different reasons. The cooperation between the EU and Kazakhstan started in 19991 and was recently renewed, in April 2016 with the signing of an Enhanced Partnership and Cooperation Agreement (EPCA). Kazakhstan is a EU's key energy supplier and world's leading uranium producer, two elements filling up the first selection criteria above-mentioned. It is also a key trading partner for China, Russia and Ukraine, all countries having a strategic importance for the EU for both economic and political reasons. Furthermore, Kazakhstan is member of the Russian-Kazakh-Bielorussian customs union, a fact which *per se* might appear as negligible, but indeed opens up the possibility to think about a dual-use trade control system between countries not part of an integration process (such as the EU). Finally, Kazakhstan is part of the Nuclear Suppliers Group (NSG) and of the Zangger Committee.

On the other side, Jordan signed a Euro-Mediterranean Agreement in May 2002, although the preparatory process for launching negotiations of a Deep and Comprehensive Free Trade

Area (DCFTA) has already started. Jordan has a strategic geo-political location for the Middle-East Region and its main trading partner is Saudi Arabia. Contrary to Kazakhstan it is not member of any international export control regime.

In terms of outcomes, EU outreach activities went a little bit further in Kazakhstan with the establishment of an identification centre (IC) but, for the rest, results achieved in both countries are very similar. In both countries, the main achievement has been the translation of EU dual-use Regulation and control list into Arabic in Jordan and into Russian in Kazakhstan. Despite the fact that it might appear as a minor achievement, the translation of EU dual-use Regulation and control list allowed not only for a knowledge of EU legislation in these countries but, more important, for the update of their national control lists introducing, indirectly through the EU, main updates introduced at the international level by export control regimes. Kazakhstan is also amending its export control regulation to harmonise it with international norms and practices, especially EU's and US' ones. Main amendments will concern: the enhancement of existing definitions, the inclusion of new definitions such as "intangible technology transfer" and "brokering activities", the establishment of identification centres, modifications in the control list and provisions aiming on the criminalisation of brokering.

Jordan, on its side, is proceeding with the elaboration of a correlation list. Finally, both countries are in process of introducing additional provisions on brokering activities for Kazakhstan and transit and transshipment for Jordan (which is also receiving legal support, by the EU and the US, in the drafting process).

4. FINAL CONSIDERATIONS AND WAYS FORWARD

The analytical comparison of trade agreements signed between the EU and P2P countries showed that, before the entry into force of the United Nations Security Council Resolution 1540, EU trade agreements did not include any WMD non-proliferation clause and preceded dual-use export control outreach programmes. In this sense, trade agreements were concluded with third countries regardless their strategic trade control system.

On the contrary, since the entry into force of Resolution 1540, EU trade agreements not only include (with few exceptions) a WMD non-proliferation clause but also do follow export controls outreach programmes. As proof of this *modus operandi*, all countries part of the P2P coming from the Asia and South-East Asia Regions did not sign any trade agreement with the EU, but negotiations have started in almost all countries (see *infra*).

In other words, it seems that the EU, before starting negotiations for trade agreements with a given country, will seek to include this “targeted” country in its trade controls outreach programme. In this sense,, trade controls outreach activities seem to serve more as a tool to prepare the playfield before the game than a final aim *per se*.

As for the inclusion of the WMD non-proliferation clause in trade agreements, this does not seem to make any difference in term of concrete outcomes, as shown by the case-studies on Kazakhstan and Jordan. Still, the inclusion of the clause in these agreements seems to be now the rule, considering the fact that all trade agreements not containing such a clause were signed before Resolution 1540 and are now in the review process to be enhanced/updated (see *infra*). Given the lack of concrete impact of the clause in term of outcomes, one might wonder why the EU “insists” on this clause. It could be argued that the clause would represent a sort of legal incentive authorising States to implement WMD non-proliferation policy and to cooperate in this field.

Finally, as regard to the impact of EU dual-use outreach activities, it seems that the spill over effect is the best result, at least for the two considered countries. In this context, by spill over effect is meant the introduction into third countries' trade control systems of international standards and "soft" legal and political harmonisation with EU export control system and legislation and, indirectly, with more general international standards (e.g. international export control regimes).

Considering the findings of the analysis presented in this paper, it seems that the independent pattern can be identified in the EU international trade rather than in its dual-use trade control outreach activities. It means that although it is true that dual-use trade control outreach activities shape international trade and contribute to create/spread international standards, they finally serve EU international trade priorities. This specific correlation between EU international trade and EU export controls policy in outreach activities is quite realistic and "expected", but it could undermine EU's credibility *vis-à-vis* its engagement to WMD non-proliferation policy. It remains to be seen next developments concerning trade agreements with P2P countries, currently in negotiation phase.

The inclusion of the WMD non-proliferation clause in all trade agreements, whatever the partner country, together with its effective implementation could demonstrate, at least from a formal perspective, EU's engagement to export controls outreach activities for WMD non-proliferation purposes instead that for "setting the table before negotiations".

The implementation/strengthening of trade controls through outreach activities as incentive, for both parts, to go ahead with trade agreements should never counteract the ultimate goal of dual-use trade controls, that is the prevention of WMD proliferation and other related security threats. Once the incentive becomes the ultimate goal for both parts and the ultimate goal is spotted with inconsistencies, dual-use trade controls, whatever outreach or inreach, are likely to become a dysfunctional superstructure,

of little help in the prevention of WMD proliferation and security risks and of obstacle to the economic-driven *diktat*. For this reason the first question is not if dual-use trade controls outreach programmes are effective, but it is what does the EU expect from these programmes. Because if the real objective was to reach out foreign markets, trends seem to suggest promising results.

**State of play of trade agreements between EU
and P2P countries by region**

Asia-China (Not yet agreements but negotiations in process):

- China (negotiations for a stand alone investment agreement)
- India (negotiations started in 2007 but stopped in 2013)
- Pakistan

South East Asia (Not yet agreements but negotiations):

- Brunei
- Cambodia
- Indonesia (Negotiations for a FTA started in 2016)
- Laos
- Malaysia (Negotiations for a FTA started in 2010 but stopped in 2012)
- Myanmar (Negotiations started in 2014 – EU text proposal presented)
- Philippines (Negotiations for a FTA started in 2015)
- Thailand (Negotiations for a FTA started in 2013)
- Vietnam (Free Trade Agreement (FTA) ready but not signed yet)

North Africa (Agreements to update – no WMD clause):

- Algeria (Euro-Mediterranean Agreement, September 2005 - post 1540, but no WMD clause)
- Egypt (Euro-Mediterranean Agreement, June 2004)
- Morocco (Association Agreement, March 2000 - to update in a Deep and Comprehensive Free Trade Area (DCFTA), negotiations started in 2013)
- Tunisia (Euro-Mediterranean Agreement, March 1998 – to update in a DCFTA, negotiations started in 2015)
- Middle East (No WMD clause):
- Jordan (Euro-Mediterranean Agreement, May 2002 – to update in a DCFTA, negotiations started in 2012)
- Lebanon (Association Agreement, March 2003)
- United Arab Emirates

Middle East (No WMD clause):

- Jordan (Euro-Mediterranean Agreement, May 2002 – to update in a DCFTA, negotiations started in 2012)
- Lebanon (Association Agreement, March 2003)
- United Arab Emirates

Eastern Europe, Caucasus and Central Asia (Agreements and WMD clause):

- Armenia (Partnership and Cooperation Agreement, September 1999 – to enhance, negotiations started in 2015)
- Azerbaijan (Partnership and Cooperation Agreement, September 1999 - to enhance but no date yet)
- Belarus
- Georgia (Association Agreement, July 2016)
- Kazakhstan (Enhanced Partnership and Cooperation Agreement, April 2016)
- Moldova (Association Agreement, July 2016)
- Ukraine (Deep and Comprehensive Association Agreement, January 2016)

South East Europe (Agreements and WMD clause):

- Albania (Stabilisation and Association Agreement, May 2006)
- Bosnia H. (Stabilisation and Association Agreement, June 2015)
- Kosovo (Stabilisation and Association Agreement, April 2016 - after 1540, but no WMD clause)
- Macedonia (Stabilisation and Association Agreement, April 2004)
- Montenegro (Stabilisation and Association Agreement, April 2010)
- Serbia (Stabilisation and Association Agreement, September 2013 - after 1540, but no WMD clause)

Outreach Activities: Harmonisation or Standardisation of Security Postures?

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The outreach activities of the European Union (EU) in the field of trade controls of dual-use items and technology find their roots in the EU Strategy against proliferation of Weapons of Mass Destruction (WMD)¹, endorsed by the European Council on 12 December 2003. A strategy is a non-legislative act of the Union that expresses the objectives of its authors *vis-à-vis* their – security – environment. In this respect, it is a one-way document which defines the perception the EU has of itself and how it sees its role and action for implementing, maintaining and enforcing peace and security in the world. This strategy, similar to the global one that was adopted the same day², relates to the vision and action of the Union by the Union alone, since the primary objective of a strategy, regardless of its origin, is to describe the world its author aspires to live in. Should outreach activities, as embedded now in the EU Partner-to-Partner (P2P) programme, thus be seen as the unilateral implementation of the security posture of the Union?

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- 1 Council of the European Union, EU Strategy against proliferation of Weapons of Mass Destruction, 10 December 2003, not published in the Official Journal. Link: <http://register.consilium.europa.eu/doc/srv?!=EN&f=ST%2015708%202003%20INIT>.
 - 2 Council of the European Union, *A Secure Europe in a Better World, European Security Strategy*, 12 December 2003, not published in the Official Journal. Link: <https://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>.

1. HARMONISING SECURITY POSTURES THROUGH CO-OPERATION

1.1. From the origin of outreach activities

The “founding act” of the EU outreach activities does not pretend to render the European vision on international security universal. It sends signals demonstrating that, although the vision is clear as regards the principle, the method is not certain.

The “WMD Strategy” clearly and extensively refers to the role of controls on the trade of dual-use items and technologies – under the term “export control” – in the fight against and prevention of the proliferation of WMD. For instance, it states that:

1. the EU is committed to strengthening export control policies and practices within its borders and beyond, in co-ordination with partners. The EU will work towards improving the existing export control mechanisms. It will advocate adherence to effective export control criteria by countries outside the existing regimes and arrangements.³
2. And it further states that:
In order to tackle and limit the proliferation risk resulting from weaknesses in the administrative or institutional organisation of some countries, the EU should encourage them to be partners in the fight against proliferation, by offering a programme aimed at assisting these countries in improving their procedures, including the enactment and enforcement of implementing penal legislation. Assistance should be associated with regular joint evaluations, reinforcing the collaborative spirit and the confidence building.⁴

3 Council of the European Union, *EU Strategy against proliferation of Weapons of Mass Destruction*, 10 December 2003, Paragraph 19.

4 *Ibid.*, Paragraph 27.

These two extracts make use of terms such as “strengthening”, “improving”, “weaknesses”, “assisting”, “evaluations”, which illustrate the idea that the Union considers that the –then– present situation beyond the EU borders is not satisfactory. However, the underlining idea has more to do with working toward convergence, and care is taken to avoid terms suggesting efforts of “uniformisation”, e.g. “encourage”, “offering”, “collaborative spirit and the confidence building”. The first extract itself is taken from the section of Chapter II entitled “Effective multilateralism is the cornerstone of the European strategy for combating proliferation of WMD”.

In relation to the substance of the outreach activities, outside the action of the EU in the trade control regimes, the Strategy contains very little:

- Strengthening export control policies and practices in co-ordination with partners of the export control regimes; advocating, where applicable, adherence to effective export control criteria by countries outside the existing regimes and arrangements; strengthening suppliers’ regimes and European co-ordination in this area.
- (...) Reinforcing the efficiency of export control in an enlarged Europe, and successfully conducting a Peer Review to disseminate good practices by taking special account of the challenges of the forthcoming enlargement.
- Setting up a programme of assistance to States in need of technical knowledge in the field of export control.
- (...) Considering exchange of information between the EU SitCen and like-minded countries.⁵

This extract is taken from the section titled “Rendering multilateralism more effective by acting resolutely against proliferators”. Despite the name of “strategy”, the contents demonstrate the intent

5 *Ibid.*, Chapter III, Section A, Paragraph 4.

to slowly and diplomatically bring partner countries in line with the principle of controlling the trade of items that can be used for proliferation purposes, rather than setting prescriptive standards originated from the European Union's knowledge or know-how. The objective of outreach activities, instead of forcing or seeking compliance with the EU rules and policies in this area of security, is to co-operate for achieving what is set to be a universal goal: non-proliferation.

The policy underpinning the strategy can explain the difference between the common meaning of a strategy, which – even if it is usually not legally binding– projects a point of view on its surrounding environment, and the apparent weakness of the document. The Common Foreign and Security Policy (CFSP), under which the Strategy was adopted, is an area where the EU Member States can only coordinate their approaches. It is not a competence of the Union itself. Even though the control of trade in dual-use items and technology is a competence of the EU, the definition of objectives for the external action of the Union in this area relies on the good will of all contributors. In other words, the weakness of the CFSP for influencing the fate of the international security collaterally weakens the contents of the Strategy's message.

1.2. **To their practice**

It is generally acknowledged that the European Union does not seek to standardise the approaches or concepts of security with its partner countries, notably because it is originally not a security organisation. Its views on security thus correspond more to “approaches” than a formal “posture”. In practice, this is also a way for the EU to convince others of the *bien-fondé* of its own approaches,

disconnected from direct “interests”. Even if this may seem unintended, it has proven to be an incentive in the establishment of partnerships in the framework of the outreach activities.⁶

The EU, through its outreach actors, demonstrated that it is aware of the impossibility to achieve uniform results in all of its partner countries, as it is also impossible even within the borders of the EU. The EU Regulation 428/2009 allows Member States to implement different approaches to a given issue, such as the adoption of national general licences or the penal provisions. The same pragmatism presides over its co-operation activities. For instance, regarding transactions to be covered by a dual-use trade control system, the EU could not and, in fact, does not constrain partner countries to strictly control all those which could, in principle, be diverted. It strongly encourages its partners to elaborate controls on export, transit, transshipment and brokering. It promotes controls on the financing or other ancillary services, which it does not strictly control itself, notably because it is aware of the practical difficulty that countries can face. In a similar vein, outreach actors do not discourage the adoption of import controls for the same reasons that the EU does not control these transactions. Effectiveness of existing good practices is sought, rather than strict compliance with standards that cannot be universally met both from a legal and a practical perspective.

The idea of universalisation itself has explicitly been waived by the European Union in the definition of its outreach method. In 2013, the European Commission’s DG DEVCO commissioned a study aimed at reviewing the method that outreach actors could use to cooperate with the partner countries in the elaboration and/or implementation of dual-use items and technology’s trade con-

6 These statements, which cannot always be supported by quantified data, as they are taken from author’s experience, who has been active in the EU outreach programmes.

trols.⁷ The conclusion of this study⁸ first stated that universalisation cannot be reached in this area. Owing to the differences of context, economic incentives, security challenges, national political priorities and, simply, respective experiences in controlling trade, one cannot duplicate the achievements of the EU or any other national system in partner countries as a principle. Based on these conclusions, a new approach for the Union's outreach activities was defined: the "3WH" approach, standing for "Why, What, Who, How".

The approach is not a method in the sense that it is not prescriptive. It proposes a set of keys for understanding dual-use trade control systems, highlighting gaps between a desirable end state –to be defined by and with each partner– and the forms and mechanisms of control that can in fact be found but that are never exhaustively met in one single system. The approach, therefore, is gradual in two ways: substantially, in allowing the outreach partnership to achieve different results in different countries without jeopardising the effectiveness of the trade control "system"; and formally, in allowing differences in the sequencing of the elaboration or implementation of the controls.

The 3WH is a benchmark of the international best practices from which the partner countries are encouraged to build up their own system but its *raison d'être* is the principle, confirmed by practical observations, that harmonisation shall be preferred to standardisation. The first aspect the approach dealing with the "Why" is a clear illustration. The outreach actors investigate partner countries' incentives for elaborating and implementing a dual-use trade control system and formulate them in a document, which the national actors can use for promoting their implementing activities. These incen-

7 Project FWC Commission 2009 – Lot 1, "Support to the Commission in preparation of activities on Illicit Trafficking and Export Control in African countries".

8 See: Odette Jankowitsch-Prevor, Quentin Michel, Sylvain Paile (eds.), *Modelling Dual-Use Trade Control Systems*, Brussels, P.I.E. Peter Lang, coll. Non-Proliferation and Security, vol. 10, 2014, 261 p., and Quentin Michel, Sylvain Paile-Calvo, "Dual-use controls outreach: a new method", *WorldECR*, Issue 38, March 2015, pp. 27-28.

tives are different or at least reflected in a different way in different countries, notably because of the respective security postures. The incentives find, through the 3WH approach, a way to be effectively considered in the “social contract” established between the provider of the outreach activities and the partner. The identification of the “Why” guarantees that the national security postures are preserved not only in the outcomes of the partnership but also in the activities that will be conducted under the partnership.

Finally, the EU outreach activities, notably in the EU P2P programme, in practice do not make use of an “EU model”. One of the reasons is that the EU political and legal configuration cannot be exported to all regions worldwide, but the main ones are that it is impossible to export the EU security “posture”. One must note that the P2P actors obviously provide testimonies from the European experiences, but also, whenever possible, from other countries, such as Japan, Malaysia and, of course, the United States. The European outreach actors, as in other outreach programmes, disseminate sources of inspiration taken from the internationally recognised experience and expertise they have. Although they promote the functioning of the system(s) they know –and value– best, they are not in a statutory position to defend a European posture on security and defence in general, the definition of which remains uneasy.

2. (NECESSARY) STANDARDISING EFFECTS

Although the primary intent of the EU for its outreach activities is not to standardise its security posture, this may be a –necessary– collateral effect of its contribution to international peace and security.

The European Union, through its outreach activities, contributes to making the principle of elaborating and implementing a trade control system on dual-use items and technologies a universal standard. This has been legitimised by the United Nations Security

Council Resolution 1540 (2004), but the EU has demonstrated an intent to make it even a contractual obligation. The EU-Tunisia Action Plan, in force since 2005, for instance, contains a clear obligation for Tunisia to cooperate with the EU in the area of dual-use trade control as a part of their security-related obligations. The section stating that the two parties shall “continue to develop cooperation on combating terrorism” provides that this goes through “cooperation on establishing effective systems of national export control, controlling export and transit of WMD-related goods, including WMD end-use control on dual use technologies, and effective sanctions for breaches of export controls”.⁹

The universalisation of the European system is also, if not a “hidden agenda”, necessarily in the mind of the outreach actors because of the nature of the controls. If these enhance security, they also create risk for the international trade of the EU and its Member States. It is natural, therefore, that the institutions, organisations and individuals that cooperate with the partner countries aim to avoid trade control mechanisms of their neighbours and international competitors from being too liberal and provoking distortions of the markets. Universalisation may also be intended in the case of the South East European partner countries. Indeed, EU candidate countries must progressively amend their legal frameworks and practices to bring them in line with EU policies and legislations in the course of their negotiating processes. In the framework of outreach activities addressing these countries, therefore, partners are requested to abide by the European vision of international security.

The importance of its control list is also a European specificity. The European “single list” has become an international best practice not only promoted by the EU, but also other international donors in outreach activities, especially in the process of elaborating and implementing dual-use trade controls. The “EU list” has

9 EU-Tunisia Action Plan, Section 2.1, Paragraph 9. Link: https://eeas.europa.eu/sites/eeas/files/tunisia_enp_ap_final_en.pdf.

thus been adopted by systems of neighbouring countries –some of them willing to join the Union– but also overseas, such as in the Philippines, Malaysia, the United Arab Emirates. Some of these countries have decided to extend the list for their national needs, such as the United Arab Emirates or the Philippines, but the EU list has undoubtedly become a “standard”. It has even been translated by the EU into several non-EU languages, such as Russian, with a view to encourage its adoption by the greatest number of countries. The list compiles details and organises the lists adopted in the international regimes, but remains specific and highlights the European Union’s vision on security, in the sense that it delineates the concept of “dual-use”. Resolution 1540 (2004) limits its scope to the WMD-related items. The EU, through the definition and list it disseminates through its outreach activities, pleads for an extended vision of non-proliferation, notably including missile technology and arms-related equipment. Its security approach is thus promoted.

In the implementation of dual-use trade control mechanisms, standardisation is also being progressively addressed. It is often raised, within and beyond the borders of the Union, that common information exchange and notification systems would adequately complete the control enforcement arsenal at the disposal of the participating countries. Sharing target and risk-management resources about dual-use transactions is also a strong wish of most of the partners of the EU. Unanimously, P2P partners call for improved intelligence information exchanges. Undoubtedly, dual-use items and technology are not the main concern of many of the countries calling for pooling resources, as such exchanges on terrorism or other types of trafficking would correspond more to their national priorities. However, these “first step” demands reflect the importance outreach activities on dual-use trade controls has in terms of confidence-building measures in the fields of security and defence in general.

The views and opinions shared by the partner countries, finally, are sometimes supportive of standardisation as a principle. Very

often, in countries which are beginning to introduce dual-use trade controls, their origins, rationale, principles and mechanisms, experts often come across the question of why an international convention has not been adopted, following the model of the Arms Trade Treaty, or why there exist no model law of international origin on the topic. Regardless of different ways to reply to these questions, one can observe that standardisation does not seem to be the “bad word” we, Europeans, believe it may be.

3. CONCLUSION

The European Union outreach programme is designed to understand its partner countries and propose approaches for the elaboration and implementation of dual-use trade controls that are tailored to national specificities. Harmonising national systems with European one(s) thus remains the engine of these activities.

Nonetheless, this flexible approach does prevent outreach actors from working toward certain guarantees of effectiveness and efficiency regarding security. It is in the interest of the Union to make sure its action actually contributes to the international security –as promoted externally– and its own security – as it should certainly make more visible internally.

Outreach Activities and Sanctions: a(n) (im)possible relationship?

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1. INTRODUCTION

The European Union export control programme for dual-use goods (renamed EU Partner to Partner, EU P2P) aims to contribute to international security through the support, offered to third countries, in the promotion of best trading practices and in the compliance with international rules.

In order to check the effectiveness of the outreach programme for the promotion of international and national security, this chapter adopts –maybe provocatively– as a term of “measurement” the notion of sanction, as elaborated on in the area of strategic trade controls.

A premise on the definition of this notion is needed. In our understanding, sanctions can be conceived, on the one hand, as restrictions prohibiting trade of certain goods to specific destinations or to and from specific people, thus being an economic tool for achieving political purposes (such as the protection of peace and international security); and on the other hand, more narrowly, as measures of punishment for the violation of export control rules. The first category includes “supranational sanctions”, i.e. measures imposed at the international level (by the UN Security Council in the form of Resolutions, based on Chapter VII of UN Charter), and at the EU level (within the Common Foreign and Security Policy

framework¹), both autonomously and implementing UN measures. The second category refers to “implementing measures”, i.e. measures adopted by Member States for the cases of violation of supranational rules regulating export control, which are the rules enacted by the international export control regimes (the Australia Group, the Missile Technology Control regime, the Nuclear Suppliers Group, the Wassenaar Arrangement, the Zangger Committee) and, in the EU context, by the Regulation 428/2009. This second category of sanctions is also referred to as “penalties”.

The following analysis represents an attempt to check the relationship between sanctions, penalties and outreach programme.

In the first part, the possible or impossible link between supranational sanctions and outreach programme will be explored; in the second part, the attention will be devoted to the Regulation 428/2009 and the (im)possibility to shape a model of “penalties” to be “exported” or included in cooperation activities, which are part of the EU outreach programme.

1 Restrictive measures are adopted in the form of Council decision, followed by a Regulation (if the sanction consists of a general embargo, or financial measures); or CFSP Council decisions alone, directly implemented by Member States (if the restriction consists of an arms embargo or travel bans).

2. FIRST PART: SUPRANATIONAL SANCTIONS AND OUTREACH

2.1. Categorisation of Sanctioned Member States and Partner Countries Participating in Outreach Programme

Considering supranational sanctions, at the international level (United Nations) there are at this stage 13 active sanctions regimes,² including both comprehensive sanctions (embargoes) and targeted measures (asset freezes and travel bans); at the EU level, there are 22 regimes, among which 14 are implementing UN ones and 8 constitute autonomous measures.³ Combining the list of sanctioned countries and the list of countries part of EU outreach programme,⁴ four categories of Member States emerge:

1. Member States under active embargo on dual-use items, but not part of outreach;
2. Member States under active arms embargo, and part of outreach;
3. Member States object of other active trade sanctions (on trade of other goods) and targeted sanctions, and part of outreach;
4. Member States under terminated arms or dual-use embargo, and part of outreach.

The following table is the result of such “matching” between sanctioned countries and countries participating in outreach.

2 See <http://www.un.org/en/sc/documents/resolutions/> and <https://www.un.org/sc/suborg/en/sanctions/information> (last visited 25.01.2017).

3 See https://eeas.europa.eu/sites/eeas/files/restrictive_measures-2017-01-17-clean.pdf (last updated 17.01.2017, last visited 25.01.2017).

4 See <https://export-control.jrc.ec.europa.eu/Maps/Dual-use-programme-countries> (last visited 25.01.2017).

	Part of EU dual-use outreach programme	Not Part of EU dual-use outreach programme
UN embargoes (active) on arms	Lebanon	
UN embargoes (terminated) on arms	Former Yugoslavia	
UN embargoes (active) on dual- use items		Iran, Iraq/Kuwait, North Korea
UN embargoes (terminated) on dual-use items	South Africa	
EU embargoes (active) on arms	Belarus, China, Lebanon, Myanmar	
EU embargoes (terminated) on arms	Former Yugoslavia, Indonesia	
EU embargoes (active) on dual- use items		Iran, Iraq, North Korea, Russian Federation, Syria
EU embargoes (terminated) on dual-use items		Iran, Iraq
Other EU trade sanctions (active)	Ukraine, Myanmar	
Other EU trade sanctions (terminated)	Myanmar (partly)	
EU targeted sanctions (asset freezes and travel bans)	Belarus, Egypt, Moldova, Ukraine, Lebanon, Bosnia and Herzegovina, Serbia and Montenegro	

2.1.1 MEMBER STATES UNDER ACTIVE EMBARGO ON DUAL-USE ITEMS BUT NOT PART OF OUTREACH

The first group is constituted by Iran,⁵ Iraq/Kuwait,⁶ the Democratic People's Republic of North Korea⁷ (under UN and EU embargo on dual-use items), the Russian Federation⁸ and Syria⁹ (under EU restrictive measures on dual-use goods). Here, there is no linkage between the presence of sanctions and outreach. It would be appropriate then to investigate the possibility of launching partnerships or preliminary liaisons and contacts with those countries, in order to promote a good export control system, which could avoid the imposition of sanctions in the future. In particular, with regard to Russia, an export control programme was in place between 2006 and 2009 (TACIS), after the collapse of the URSS, and it was terminated because of the lack of political will by Russian government; thus, it would be useful to rethink of it and restart some approaching steps, especially in light of the current geopolitical

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- 5 As regards the UN, see Resolutions 1696/2006, 1737/2006 imposing the suspension of all enrichment-related and reprocessing activities; 1747/2007; 1803/2008; and 1929/2010. As regards the EU, see Council Decision 2010/413/CFSP imposing embargo on dual-use goods; Council Decision 2011/235/CFSP; Council Regulation 359/2011 and 267/2012 imposing embargo on material, goods and technology which could contribute to enrichment-related, reprocessing or heavy water-related activities, or to the development of nuclear weapon delivery system.
 - 6 As regards the UN, see Resolutions 661/1990; 1483/2003; 1518/2003 and 1546/2004. As regards the EU, see Common Position 2003/495/CFSP imposing arms embargo on Iraq, Council Regulation 3541/1992 and 1210/2003 providing asset freezes and prohibition on import/export/trade in Iraq cultural property.
 - 7 As regards the UN, see Resolutions 1695/2006; 1718/2006; 2094/2013; 2270/2016, and 2321/2016.
 - 8 Council Decision 2014/145/CFSP; 2014/512/CFSP prohibiting arms exports to Russia; Council Regulation 269/2014; Council Decision 2014/386/CFSP containing import ban on goods originating in the Crimea/ Sevastopol; Regulation 833/2014 containing restrictions on dual-use goods with respect to Russia; Regulations 959/2014; 960/2014 and 1290/2014.
 - 9 Council Decision 2011/273/CFSP and Council Regulation 442/2011; Council Decision 2013/255/CFSP containing embargo on luxury goods and arms embargo; Council Regulation 36/2012 containing export ban on telecommunications equipment; and Council Regulation 305/2006.

context. This could help mitigate the sanctions in place and would be a significant move towards the restoration of better relationship between the European Union and Russia.

2.1.2 MEMBER STATES UNDER ACTIVE ARMS EMBARGO AND PART OF OUTREACH

Lebanon¹⁰ (under UN and EU arms embargo, as well as travel bans and asset freezes), Belarus¹¹ and Myanmar¹² (under EU arms embargo and targeted measures) and China¹³ (EU arms embargo) have become part of outreach programme at different moments, but in all these cases the inclusion in the outreach programme occurred after the imposition of arms embargo and/or targeted measures: Lebanon joined in 2004, Belarus in 2015, China in 2006 and Myanmar in 2016.

A direct linkage between outreach and sanctions cannot be outlined in this case either, as outreach refers to dual-use items, while the embargo addresses arms. Nevertheless, it could be suggested that outreach may have the capacity to mitigate, to some

10 As regards the UN, see Resolutions 1636/2005 and 1701/2006; in the EU, Common Position 2006/625/CFSP and Council Regulation 1412/2006 imposing arms embargo and bans on certain services; Common Position 2005/388/CFSP and Council Regulation 305/2006.

11 Council Decision 2004/661/CFSP imposing travel bans, assets freezes, and embargo on arms and material that can be used for internal repression; Regulation 765/2006 and Council Decision 2012/642/CFSP.

12 Common Position 2006/318/CFSP imposing bans to export equipment that might be used for internal repression, arms embargo and asset freezes. Asset freezes and the embargo on equipment for internal repression were lifted in 2012, while other restrictions remain active until 30 April 2017. See Council Decision 2013/184/CFSP arms embargo and on material which might be used for internal repression and Council Regulation 401/2013 listing banned materials.

13 Presidential Statement, Declaration of European Council, 27 June 1989. Arms embargo on China is very much criticised and can be considered as a sanction with "uncertain status": indeed, the measure was adopted through an informal legal tool (even if the presidential Statement was the only possible instrument at that time), and many EU Member States still insist for the lifting, while others are against it.

extent, the existing sanction system, through the promotion of good trade practices, and thus influence changes in the “reputation” of the sanctioned country within the geopolitical environment.

2.1.3 MEMBER STATES OBJECT OF OTHER ACTIVE TRADE SANCTIONS (ON TRADE OF OTHER GOODS) AND TARGETED MEASURES, AND PART OF OUTREACH

Ukraine became part of outreach programme in 2005 but, after the Russian threats to its sovereignty, a set of sanctions was launched by the EU, precisely:

1. sanctions on Crimea and Sevastopol, consisting in bans of imports of goods from and to Crimea and Sevastopol, used in the sectors of transport, telecommunications, energy, oil, gas and mineral resources;¹⁴
2. sanctions for the threat to Ukrainian sovereignty as such, in the form of targeted asset freezes and travel bans;¹⁵ and
3. asset freezes for misappropriation of public property.¹⁶

In this case, outreach and sanctions respond to different objectives, and thus there is a mere coexistence of the two instruments. There is a sort of “double strategy” by the EU, which, on the one hand, promotes good trade control through outreach, and on the other hand imposes restrictive measures upon specific people, specific regions of the country and specific goods for foreign policy reasons.

The same occurs in the cases of Moldova and Egypt. Moldova is part of outreach since 2007, but in 2008 autonomous targeted sanctions were launched on a specific area and specific people.¹⁷

14 Council Decision 2014/386/CFSP, 2014/507/CFSP, 2014/933/CFSP, and Council Regulation 692/2014, 825/2014, 1351/2014.

15 Council Decision 2014/145/CFSP and Council Regulation 269/2014.

16 Council Decision 2014/119/CFSP and Council Regulation 208/2014.

17 Council Decision 2008/160/CFSP and 2010/573/CFSP.

Egypt was included in the outreach programme in 2011 and at the same time targeted measures addressed people linked to Mubarak regime and to misappropriation of funds.¹⁸ No meaningful relationship between outreach and restrictive measures can be underlined in these two cases either.

2.1.4 MEMBER STATES UNDER TERMINATED ARMS OR DUAL-USE EMBARGO, AND PART OF OUTREACH

Former Yugoslavia and Indonesia are cases of EU terminated embargoes. It is worth remembering that the first Pilot Project of EU dual-use Outreach was started by the European Parliament in 2004 with four countries from the Balkans (among which Bosnia Herzegovina and Serbia and Montenegro).

Even if the programme was launched in the framework of the establishment of a Stabilisation and Association process with Western Balkan countries with the aim of eventual EU membership¹⁹ (so, it was not thought in relation to, or as a consequence of, the removal of sanctions), the outreach chronologically followed the lifting of embargoes on the former Yugoslavia. Indeed, in 1991 and 1994 both the European Community and the UN imposed an arms embargo on former Yugoslavia,²⁰ then progressively lifted it²¹ and ordered the complete removal of arms embargo on the

18 Council Decision 2011/172/CFSP and Council Regulation 270/2011.

19 See the Communication from the Commission to the Council and the European Parliament of 26 May 1999 on the stabilisation and association process for countries of South-Eastern Europe (COM (1999) 235 final), and the Council Conclusions on 21 June 1999.

20 As regards the UN, see Resolution 713/1991 and 757/1994 upon Serbia and Montenegro. In the EU, see Common Position 94/366/CFSP and Council Regulation 1733/1994 implementing UN arms embargo.

21 Common Position 96/184/CFSP, stating that export licence applications to Slovenia and the former Yugoslav Republic of Macedonia (FYROM) had to be considered on a case-by-case basis; Council Decision 1998/398/CFSP lifted arms embargo on Slovenia; Council Decision 1999/481/CFSP lifted the embargo on exports of small arms to the police forces of Bosnia and Herzegovina and the embargo on transfers of equipment needed for de-mining activities.

former Yugoslavia in 2001.²² Targeted sanctions on certain people and activities in Bosnia and Herzegovina are still active (since 2004)²³ and likewise on people linked to Milosevic regime in Serbia and Montenegro (since 2000).²⁴ Significantly enough, the launch of the programme was at least “influenced” by the removal of the embargo, although the lifting was not the cause for beginning outreach activities.

A similar situation occurred in Indonesia, where the enjoyment of the outreach programme happened in 2012, after the removal of the arms embargo (in 2000).²⁵

2.2. **Some remarks on the relationship between supranational sanctions and outreach**

On the basis of the analysis conducted so far, drawing a meaningful relationship between supranational sanctions and the EU dual use outreach seems quite difficult. Outreach programmes and sanctions appear as responding to different objectives. Outreach is thought as a way for incrementing cooperation and security both at national and international level, while sanctions are tools for punishing Member States for a wrong behaviour, for lack of respect to international rules (such as human rights), or for representing a threat to peace and security. However, the role that an outreach programme can play in mitigating the existing sanctions regime cannot be underestimated (even if the embargo is on arms or other goods than the dual-use ones), as well as its role in preventing future sanctions from being enacted: indeed, outreach can encourage the

22 Common Position 2001/719/CFSP and 2006/29/CFSP.

23 Regulation 1763/2004 and Council Decision 2011/173/CFSP about asset freezes and travel bans on people undermining Dayton/Paris General Framework Agreement for Peace.

24 Common Position 2000/696/CFSP and Regulation 2488/2000. Targeted sanctions upon Milosevic regime were renewed through Common Position 2014/742/CFSP and Council Regulation 1145/2014.

25 Common Position 1999/624/CFSP and 2158/1999/CFSP imposing arms embargo and bans to supply of equipment that can be used for internal repression or terrorism. In January 2000 the arms embargo was lifted.

adoption of good practices, or support the drafting of “fair” legislation, or help to train competent professionals operating in the field. All this can change the EU’s attitude in sanctioning the country, or avoid the future imposition of sanctions by the EU if an effective trade control system is in place.

3. SECOND PART: EUROPEAN PENALTIES AND OUTREACH

3.1. Regulation 428/2009 and Penalties

Moving on to the level of penalties, i.e. implementing norms for the violation of export control rules, the central piece of legislation in the European context is Regulation 428/2009.²⁶ Indeed, EU Member States draft national norms on the basis of the framework embedded in the “dual-use regulation”. The research question is the following: does Regulation 428/2009 include a “model” of penalties for violation of export control rules, which could be shown to Partner countries of the outreach programme? Anticipating the conclusion, the answer is no. Regulation 428/2009 does not offer a clear indication of penalties neither substantially (meaning that the cases and types of violation that trigger the penalty are not mentioned), nor quantitatively/numerically (meaning that the amount of fines or imprisonment or confiscation or the amount of any other administrative, or civil, or criminal penalty is not specified). However, some references to possible violations are contained in art. 4.2 and 4.4, which require authorisations for the export of dual-use items not listed in Annex I (and subject to military end use) when the final destination or the purchasing country is subject to an arms embargo, or require the information to competent authorities as regards the destination of dual-use items

26 Council Regulation 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, in OJ L 134, 29.05.2009, p. 1–269, amended by Regulation 599/2014 of 16 April 2014.

to a country under embargo for WMD purposes. All this implies that, if the export occurs without authorisation, or there is a lack of information, a penalty can be triggered. However, it is up to Member States to define the violations and consequent penalties. Indeed, the regulation works *de facto* as a directive, leaving a large margin of appreciation to Member States. Art. 24, in particular, provides that Member States shall adopt proper penalties for enforcing the regulation, provided that they are “effective, proportionate and dissuasive”. They can also follow their own national enforcement mechanisms, as long as penalties and enforcement mechanisms meet the conditions of necessity and equivalence, and respect the principle of mutual recognition.

3.2. **The European Commission’s Proposal COM(2016) 616 final for Recasting Regulation 428/2009, and Penalties**

At the end of September 2016, the Commission published its proposal to amend Regulation 428/2009.²⁷ As regards penalties, the Proposal reiterates art. 24 (now art. 22) and adds a new article (23) (known as “anti-circumvention clause”) prohibiting the participation, knowingly and intentionally, in activities, the object or effect of which is to circumvent the need for an authorisation for export, brokering, transit and technical assistance of dual use items (as provided by arts. 3, 4, 5, 6 and 7). So, now an explicit case of violation is stated in terms of type of violation; however, quantitative and numerical penalties are still lacking and thus left to Member States’ choices of implementation.

Moreover, the Proposal Member States that the new regulation endorses the principles embedded in the Joint Action 2000/401/

27 See COM(2016) 616 final, Proposal for a Regulation of the European Parliament and of the Council, setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast), 28.09.2016, <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-616-EN-F1-1.PDF> (last visited 25.01.2017).

CFSP,²⁸ which complemented Regulation 428/2009. Such Joint Action focuses on technical assistance on certain military-end uses, and it also calls upon for the Member States' intervention in drafting an appropriate system of sanctions in case of violation of the Joint Action itself (art.5).

3.3. **Member States' Implementation of Penalties**

Taking into account, from a comparative perspective, the different European legislations implementing Regulation 428/2009, a "kaleidoscope" of provisions emerges.

3.3.1 **ADMINISTRATIVE PENALTIES**

Administrative penalties are provided in all the Member States, even though Denmark,²⁹ Estonia,³⁰ Finland³¹ and Sweden³² make a general reference to fines without indicating a precise amount, and thus the choice is left to competent authorities.

Substantially speaking, for most countries a violation occurs when a required authorisation or license for dual-use items is bypassed.

28 Council Joint Action of 22 June 2000 (2000/401/CFSP) concerning the control of technical assistance related to certain military end-uses, in OJ L 159, 30.06.2000, pp. 0216 – 0217.

29 Danish Executive Order 475/2005 and Danish Customs Code (law 765/2004).

30 Estonian Strategic Goods Act, 2004 and Customs Act, 2004.

31 Law 562/1996 on dual-use export control; Criminal Code; Customs Law (Law 1299/2003); Act on the Export and Transit of Defence Materiel 242/1990, as amended by Law 900/2002.

32 2000 Swedish Act on the Control of Dual-use Items and Technical Assistance, SFS 2000:1064, as amended in 2008; and 2000 Act on Penalties for Smuggling, SFS 2000:1225, as amended in 2008.

Malta,³³ the Netherlands,³⁴ Romania³⁵ and Slovakia³⁶ indicate the case of non-observance of the end-user and final destination declarations of strategic goods, while the omission of information or giving incorrect and incomplete information to the licensing authority is provided in Austria,³⁷ Belgium,³⁸ Bulgaria,³⁹ Croatia,⁴⁰ France,⁴¹ Germany,⁴² Hungary,⁴³ Ireland,⁴⁴ Italy,⁴⁵ the Netherlands,

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- 33 Dual-Use Items (Export Control) Regulations, 2004, Legal Notice 416 of 2004, under the National Interest (Enabling Powers) Act; and Military Equipment (Export Control) Regulations, 2001, Legal Notice 269 of 2001.
- 34 2008 General Customs Act; 2008 Strategic Goods Decree; 1950 Economic Offences Act; 2012 Strategic Services Act (for the control of brokering, technical assistance and intangible transfers of technology); Law of 5 July 1997, on the rules concerning the manufacturing, trading, transporting, stocking, carrying of weapons and munitions (Weapons and Munitions Act).
- 35 Government Decision 594/1992 on import and export control of strategic goods and dual-use goods and technologies; Law 93/1994 on the import and export control of strategic goods; Law 136/2007 on export control regime of dual-use goods; Governmental Ordinance 119/2010; and Criminal Code.
- 36 Slovakian Act 26/2002 (Trading in Dual-use Goods) modified by Law no 39/2011; Act 179/1998 (Trading in Military Material); Act 199/2004 (Customs Act); and Act 21/2007 (on dual-use goods).
- 37 Austrian Foreign Trade Act 2011 (BGBl I 26/2011 as amended by BGBl I Nr. 37/2013) about military goods and dual-use items.
- 38 Law of 11 September 1962; General Customs and Excise Act of 18 July 1977; Law of 5 August 1991 relating to import, export, and the transit of arms, munitions, and material having specifically a military use and related technology (Foreign Arms Trade Act); Ministerial Orders of 28 September 2000 regulating the export and transit of dual-use items and technology; Law of 5 March 1952 concerning surcharges on criminal fines, as last amended in 2003.
- 39 1998 Customs Law; and 1996 Law on Control of Foreign Trade Activity in Arms and Dual-Use Goods and Technologies.
- 40 Act on the Export of Dual-use Items (OG 80/11 and 68/2013).
- 41 Law related to cryptographic products (Law 2004-575 of 21 June 2004); Decree 2001-1192 of 13 December 2001 on control of export, import and transfer of dual-use products; Arrêté of 13 December 2001 on control of exports of dual-use goods to a third country and transfer to EU countries; and Customs Code.
- 42 Regulatory Offences Act and German Foreign Trade and Payments Act.
- 43 Government Decree 13/2011 on foreign trade of dual-use items; Government Decree 301/2005 on the detailed rules of the licensing of manufacturing military products and the provision of military services; Government Decree 160/2011 regulating the export, import, transit and transfer of military products; and Criminal Code.
- 44 Control of Exports (Dual Use Items) Order 2009 SI n. 443/2009 and Control of Exports Act 2008.
- 45 Legislative Decree 96/2003 and Law 689/1981.

Poland,⁴⁶ Slovakia, Spain⁴⁷ and the UK.⁴⁸ The breach of a duty of care as a result of a lack of training compliance procedures has been embedded in German legislation. Violations of Regulation 428 are assimilated, or linked to smuggling in Belgium, Finland, Spain, Greece⁴⁹ and Latvia.⁵⁰ Slovakia contains a special rule on import, export, transport of rough diamonds, while France has norms on cryptographic products as a special category of dual-use items.

Aggravating cases are contemplated in Austria, Bulgaria, Germany, Estonia, France, Hungary, Latvia, Spain and Sweden, while the mitigating ones are found in Belgium, Finland, Greece, Slovakia, Sweden, the UK (“restoration penalty”). Recidivism is mentioned in Belgium Bulgaria, Spain and Sweden, and negligence is punished along with intention in Austria, Bulgaria, Finland, Germany, Sweden, Spain, and the UK.

Numerically, the highest fines are established in Belgium (up to 1 million for trade without license, which can reach 5.5 million Euros in more serious cases) and Germany (up to 1 million Euros for companies). A unique case is the UK with territorial application of fines: in case of minor infringements of brokering, technology and software transfers, the fines vary if the act is committed in

46 Law of 29 November 2000 on foreign trade in goods, technologies and services of strategic importance to the security of the State and to maintaining international peace and security (Law on the export control) amended on 2 July 2004; Criminal Code, 6 June 1997 (Dz.U.1997.88.553); and Law of 21 May 1999 on arms and munitions.

47 Law 53/2007 controlling the external trade in defence and dual-use items, implemented through the Royal Decree 679/2014; Criminal Code; Organic Law 12/1995, known as the Anti-smuggling Act, modified in 2015; and Royal Decree 1782/2004, Regulation on control of foreign trade in material for military end-uses, other material and dual-use items and technology.

48 1979 Customs and Excise Management Act; 2003 Export of Goods, Transfer of Technology and Provision of Technical Assistance Order (Statutory Instrument 2003/2764, as amended in 2008).

49 National Customs Code (Law 2960/2001), Law 4072/2012, Ministerial Decision E3/1255/06.03.1991 and Ministerial Decision 2641/E3/3327/26.03.1992 concerning control in export of items and technologies which affect the National Security in Greece.

50 2004 Law on Circulation of Strategic goods; Latvian Code of Administrative Violations; and Latvian Criminal Code.

England, Wales or Scotland and Northern Ireland. In the case of Spain, Czech Republic,⁵¹ Latvia, Greece, Ireland, Luxembourg⁵² and Slovakia, fines are linked to the value of goods.

In some Member States, other administrative penalties consist of suspension, annulations or revocation of export licences (France, Belgium, Germany, Luxembourg), the ban of carrying out dual-use exports (Croatia); the temporary suspension of a firm's activities (Greece and Latvia); the deprivation of the exporters' rights or privileges (Hungary and the Netherlands); the prohibition to accept public subsidies or public aid for contracting with public administration or for having tax or national insurance benefits (Spain).

3.3.2 CRIMINAL PENALTIES

In some cases, administrative actions are provided in alternative ("or") to criminal ones, as it occurs in Austria, Germany, Greece, Hungary, Latvia, Lithuania,⁵³ Malta, Poland, Slovenia⁵⁴ and Sweden, while in Czech Republic, Finland, France, the Netherlands, Portugal,⁵⁵ Romania, Slovakia, Spain, and the UK criminal penalties are in addition ("and") to administrative ones,

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- 51 Act 13/1993, Customs Act; Act 594/2004 concerning the control of exports and imports of goods and technologies that are subject to international control regimes, as amended by Act 343/2010; and Criminal Code.
- 52 General Act on Customs and Excise of 18 July 1977; Grand-Ducal Regulation of 31 October 1995 on the import, export and transit of arms, munitions and equipment specifically intended for military use and related technology; Grand-Ducal Regulations of 5 October 2000 govern the export and transit of dual-use goods and technology.
- 53 Law on the Export, Import and Transit Control of Strategic Goods, 2004; Government Resolution 932/2004 on the Approval of Regulations for Licensing Export, Import, Transit and Brokerage of Strategic Goods and on Regulations for Enforcing the Control of Strategic Goods; Criminal Code; and Code of Administrative Offences.
- 54 Criminal Code; 2001 Export Control of Dual-Use Goods Act (amended in 2011 by law 39/2011); Decree on the Implementation of Dual-Use Goods Control.
- 55 Decree Law 436/91 and Criminal Code.

and in Belgium, Croatia, Cyprus,⁵⁶ Denmark, Ireland, Luxembourg and the Netherlands, the possibility of choosing between the both (“and/or”) is upon the competent authority.

Imprisonment is usually around 2 and 6 years. The most frequent and average penalty is up to 5 years’ imprisonment, as it occurs in Belgium, Croatia, Estonia, France, Germany, Ireland, Slovenia and Spain. France shows the highest penalty (up to 10 in case of trade without authorisation if the items are dangerous, or up to 20 years if repeated offence).

3.3.3 CONFISCATION

Confiscation is established in 16 countries (Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, France, Greece, Italy, Latvia, Luxembourg, the Netherlands, Poland, Slovakia, Spain and the UK). In particular, Belgium provides for the confiscation of goods smuggled or exported without the license; France and Spain also refer confiscation to the transport means involved and to the direct and indirect profits. Confiscation is an additional measure in Germany, discretionary in Italy, and compulsory in Luxembourg.

3.4. A European model of penalties?

The analysis conducted above shows that European States have chosen many different solutions for implementing Regulation 428/2009 as regards penalties. Much still remains to be done to pursue harmonisation and a coherent approach within Europe. Member States sometimes refer to general pieces or legislation (such as penal codes), other times they enact specific texts on dual-use items; some of them punish negligence, others not; the subjects of punishment are, in some cases, exporters only, in other cases all

56 Ministerial Decrees 91/2000 and 133/2000 about exportation, re-exportation or transit of goods and substances in compliance with the obligations which emanate from the membership of the Republic of Cyprus in the Nuclear Suppliers Group and the Australia Group; Ministerial Decree 601/2004 on dual-use goods; and Order 355/2002 Regulation of Export Control of dual-use goods and technology.

the stakeholders of supply chain, included helpers, participators, collaborators and anyone who knows or is involved in the illicit trade. Thus, determining a European model is almost impossible. However, such situation can be interpreted in opposite ways: on the one hand, it can encourage an “in-reach” restructure, harmonisation and modernisation of EU penalties, before “exporting” the EU system to Partner Countries. Indeed, it would be proper to add, at least, some other substantial explicit cases of violation in the Regulation (beyond the “anti-circumvention clause”), then leaving the implementation on Member States. On the other hand, the lack of a “model law” could mean that Partner Countries must identify by themselves the relevant elements in the different EU national legislations, and then develop their own rules, provided they are in line with international export control regimes, treaties and the UN Security Council Resolution 1540 (2004).

4. CONCLUSION: WHAT WAY FORWARD?

This chapter has taken the notion of “sanctions” in the area of strategic trade controls to examine the function and the role of the EU dual-use outreach programme.

Considering firstly “supranational sanctions”, it seems that no relationship may exist between outreach and sanctions. Indeed, there is no clear evidence that the lifting of an embargo upon a State has induced the EU to start an outreach programme with that country, nor are there Member States that have been under UN and EU embargo on dual-use goods and now are participating in outreach. However, on the basis of the analysis above, it is useful to conclude with some recommendations as a way forward for the improvement of outreach programmes.

Since these programmes constitute an instrument of cooperation and dialogue with external partners, as embedded in art. 27 of the new Proposal of Regulation 428/2009, the focus on the real

needs of the Partner Countries should be encouraged. Indeed, the historical situation of the country, such as having been subject to supranational sanctions, or still being object of targeted measures and other trade or financial or travel restrictions, should be considered evaluated correctly when developing outreach activities. Knowing that the country has been under embargo can explain the presence of some “resistances” to be involved in outreach, and thus it may help developing better measures, trainings, practices, and improving the dialogue. Then, if the State is still under EU restrictive measures, it is appropriate to introduce tailored trainings on trade compliance, and strengthening the existing awareness modules about enforcement, investigation and prosecution. This could enhance the country’s compliance efforts, and therefore outreach can play a role in the mitigation and undermining of active supranational sanctions, even in the long term.

Secondly, when dealing with the issue of EU penalties for the violation of Regulation 428/2009, here again it seems that outreach programme has no link with the topic. The comparative analysis between EU Member States’ legislations has demonstrated that a European model of penalties does not exist at the current stage. So, outreach programmes have no model to “offer” to Partner Countries, especially when providing legal assistance to support the drafting of laws and associated regulations, one of the aims of the EU P2P programme. However, this can be seen both as the confirmation of the approach that the outreach programme has adopted so far, and as a stimulus for change. In the first meaning, the lack of a model shows that the EU does not claim to stand from an arrogant position towards Partner Member States by imposing a model, but it simply “accompanies” them (as a peer, perfectly in line with the spirit of the EU P2P) along the process for the adoption of the rules that are more suitable to them. Therefore, the absence of a harmonised framework about penalties stresses the importance for the EU consortium to continue in the same line of cooperation with Partner Countries as developed until now, and stimulate the

approach of “proposing” –not “imposing”– an effective strategic trade control system. Moreover, as a matter of recommendation, the lack of a model may stimulate the EU to turn towards itself (“in-reach”) and rethink of the existing rules, by better defining or broadening them, especially in the current process of revision of Regulation 428/2009.

National Interdiction Mechanism as a tool for enhancing counter-proliferation capabilities

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The article describes an initiative undertaken by the government of the Republic of Poland in order to enhance national capabilities for countering proliferation of Weapons of Mass Destruction (WMD). Its outcome was a guidebook, called National Interdiction Mechanism, which focuses on interrupting transfers of WMD-related dual use goods and describes procedures for stopping suspicious transports carrying those items. This paper provides information on the guidebook itself and on the process that led to its endorsement. It concludes by proposing to consider similar process as an outreach initiative in export control and counter proliferation programs.

1. INTRODUCTION

The National Interdiction Mechanism is an official document that was adopted by the government of the Republic of Poland in December 2016. It describes procedures for interagency cooperation and decision-making when interdicting a dual use item suspected of being destined for production of Weapons of Mass Destruction or their delivery means. It also presents international commitments in non-proliferation domain and national legal basis for actions of governmental authorities. The National Interdiction Mechanism serves as a guidebook which is meant to help to expedite actions by

relevant services. Moreover, it might also contribute to strengthening institutional memory among governmental institutions in Poland in the counter-proliferation domain.

The work on the National Interdiction Mechanism was undertaken within the context of the participation of Poland in the Proliferation Security Initiative (PSI). PSI, established in 2003, groups over one hundred States which committed themselves to countering proliferation of Weapons of Mass Destruction and their delivery means¹. PSI aims at coordinating “Participating States’ efforts, consistent with national legal authorities and relevant international law (e. g. UNSCR 1540)” to halt proliferation related trade in dual use goods. Thus, PSI complements existing counter proliferation efforts and provides a platform for networking among states and coordination of their activities. Firstly, the initiative strives for enhancing nations’ capabilities to take timely and appropriate action to stop WMD-related shipments. Secondly, when action is needed endorers of the PSI seek to stop the delivery by cooperating with each other.

PSI initially focused on stopping and seizing WMD-related items on high sea. Taking into account practical problems relating to interdicting ships and inspecting cargo at open seas, the PSI forum soon took under deliberations all issues relating to preventing and countering proliferation of WMD-related goods: export control, customs authorities, prosecution and countering proliferation financing just to name the most significant ones.

Poland was one of the co-founders of PSI in 2003. Nevertheless, despite over 10 years’ experience of implementing commitments under the PSI, in 2015 Polish authorities commenced a thorough review of national laws and regulations related to countering and preventing proliferation of WMD. Therefore, at the beginning of

1 More information on PSI is available at its website: <http://www.psi-online.info/Vertretung/psi/en/01-about-psi/0-about-us.html>. Accessed on 19 March 2017.

2015 works began to design a hard-copy document providing a comprehensive information on national laws, procedures and cooperation mechanism available for interdicting WMD-related goods.

2. AIM FOR ESTABLISHING THE NATIONAL INTERDICTION MECHANISM

The reason of creating the document was the necessity to enact a guidebook describing procedures for cooperation and decision making in an interdiction scenario and define options and actions available to authorities. The Mechanism connects export control legal framework with enforcement, fine tunes decision-making process thus contributing to strengthening of national counter-proliferation capabilities.

National Interdiction Mechanism was established in order to provide clear instructions for a situation when a WMD-related item (dual-use good) needs to be interdicted (stopped and confiscated) by the authorities during its transport. The center problem in decision-making in such a situation is related to the nature of the good in question. It is not any genre of Weapon of Mass Destruction that needs to be stopped (deciding about halting such a shipment would be obvious, except for safety considerations). The suspected good is a dual-use item, which apart from having a WMD application, may be credibly used in a production of a civilian product. Moreover, the item might be transported by an otherwise trustworthy private shipping company not aware of the possible military use of the good. In such a situation it is important that all first-line officers have clear information on legal issues, its consequences and instructions on available actions, which can be safely undertaken.

The Mechanism addresses the difficulty of interdicting dual use goods transported by legal means of commercial shipping (for example transited by mass container ships) when interdicting interferes with legal business activity. It provides clear information on

the issue, legal framework and options for action. It might be used by the representatives of law enforcement services on the first line (custom authorities, internal security service, border guard, police) and other governmental authorities involved (export control authority, diplomatic service etc.). Hence rendering decision-making under time constraints faster and easier. The National Interdiction Mechanism will serve as a kind of a guidebook that will help to expedite actions. Moreover, it will strengthen institutional memory among governmental institutions in Poland in the counter-proliferation domain.

3. THE NATIONAL INTERDICTION MECHANISM OF WMD-RELATED GOODS

The document is entitled “«National Interdiction Mechanism» of illegal transfers of WMD, its means of delivery, technologies and dual use goods for its production. International WMD non-proliferation commitments of the Republic of Poland and national counter measures.” It was adopted on 23 December 2016 by the Council of Ministers (the highest governmental body in Poland). The work on it was conducted by the *Interministerial Committee for the prevention of WMD proliferation and implementation of Proliferation Security Initiative (PSI)*.

National Interdiction Mechanism is a 100-page handbook presenting all relevant issues with regard to countering proliferation of WMD: legal framework and procedures in export and custom controls, law enforcement and prosecution. Its chapters present the following topics:

1. International non-proliferation commitments of Poland,
2. Implementation of UN and EU sanctions in Poland,
3. General overview of the national export control system,

4. Competences of all relevant agencies that could be involved in countering proliferation, including stopping means of transports of dual use goods,
5. Cooperation and decision making procedures for an interdiction of a WMD-related material transported through Poland by sea, air and land,
6. Possible options for actions and their legal grounds,
7. Cooperation between authorities and decision-making mechanisms,
8. Scope of responsibilities of authorities,
9. National and international channels of communication.

The core essence of the Mechanism is a description of actions that need to be taken when interdiction of a suspicious transport of WMD-related materials is needed. This concerns cases of transfers to and from States and non-State actors of proliferation concern. It differentiates between end-users under international sanctions and those not covered by them. The document describes decision making and cooperation procedures between all relevant agencies. The National Interdiction Mechanism describes also procedures for international cooperation on interdiction of WMD-related dual use goods outside of Poland.

The mechanism is based on current legal framework and existing competences of national authorities. It does not introduce new laws or new formal responsibilities for agencies. However, it does describe or introduce new channels of communication and information exchange, and procedures for cooperation. Moreover, it clearly indicates “who is in charge of doing what” thereby providing procedures for solving challenging situations. On the basis of the existing legal basis it indicates authorities responsible for each step in the interdiction process, from decision-making, through stopping the item, to prosecution. Gathering all relevant information together in one handbook brings new quality to the knowledge available to actors involved.

As customs play the most important role in interdicting WMD-related dual use goods, special attention was given to their competences and authorities to act in harbors, airports, land border crossings and in the territory of Poland. The guidebook covers goods exported and in transit, those with an export control license and those being exported without one (e.g. items falling under control lists).

A great added value of the document comes from bringing together all relevant information in one document. Therefore, it serves as a handbook on countering-proliferation and provides institutional memory on the issue in Poland.

4. PREPARING THE NATIONAL INTERDICTION MECHANISM

In 2015 and 2016, an *Interagency Committee on preventing proliferation and PSI implementation* undertook a set of table top exercises and interagency meetings aimed at reviewing national law and procedures relevant to countering proliferation. The exercises were dedicated to interdicting WMD-related dual use goods at sea, on land and in the air. Participants were representing all relevant national authorities: custom authorities from the central and regional Custom Offices, export control authority, Internal Security Agency, Border Guards, Police (CBRN counterterrorism unit), Ministry of Foreign Affairs, relevant transportation authorities responsible for sea ports and civil aviation and last but not least representatives of Ministry of Defence and of Armed Forces.

During the exercises, the group discussed consecutive actions that would be undertaken from the very moment of receiving information on a suspicious shipment to the prosecution of the accomplices. This included legal basis of action for each authority, internal procedures and practices, flow of information between agencies involved and the decision-making process.

The table top exercises were complemented by legal analysis of international legal framework on non-proliferation and export control, including EU law in this domain and the UN Convention on the Law of the Sea. Very pertinent were consultations with two other EU States on the implementation of the EU export control and customs regulations and PSI commitments. It helped to compare best-practices and law regulations. Consultations were conducted with one of the largest economic partners of Poland with whom a large portion of the Polish trade in dual use goods is performed. The second State was interesting for Poland due to its considerably vast interdiction experience and long established national formal procedure for fast decision-making.

On the basis of these discussions, the description of the decision-making process and procedures for interdiction in Poland were written down along with respective legal basis for each action.

Of course, any system is faultless, and the review contributed to identifying some imperfections in national legal framework that necessitate further work in due course. Another conclusion was a need for establishing interagency agreements for cooperation between customs, Internal Security Agency and Ministry of Foreign Affairs when interdicting a WMD-related item. They would provide a clear set of guiding rules for all actors involved that will enable to save time in critical moments.

As in every interagency process, conducting regular interagency exercises and meetings, contributed to continued awareness raising among agencies. This was especially beneficial as in the middle of the effort on the Mechanism, the government in Poland changed as a result of parliamentary elections. Additionally, working relations (re)established among national and international partners during the process will be extremely useful in a real PSI situation, when personal contacts are of utmost importance.

5. CONCLUSIONS

Enacting the National Interdiction Mechanism in the course of national table top exercises could serve any State to verify its counter-proliferation laws and procedures. It would be especially relevant for countries that either recently introduced export control system and regulations relating to the implementation of the United Nations Security Council 1540 Resolution, or that undertook any reforms in this regard. It would help to identify and fill in gaps. What is important, is that the mechanisms may be tailor made to the capabilities and needs of any interested State, disregard its size.

Working on national mechanism through TTX and scenario-based discussions may also be proposed as an interesting activity within an outreach program. Its practical approach would effectively engage participants. It would then contribute to tangible and long lasting results of an outreach program by improving also institutional memory and providing networking opportunities.