

Brief Analysis of Commission Communication on the review of Regulation 428/2009

Subject

On 29 April 2014, in the framework of the review process on the implementation of Regulation 428/2009, established by Article 25 of this Regulation¹, the Commission published in the *Official Journal of the European Union* a Communication to the Council and the European Parliament on *The Review of export control policy: ensuring security and competitiveness in a changing world*.

Structure of the communication

<p>1. Introduction</p>	<p>Current state of EU dual use export control policy and presentation of the reviewing process:</p> <ul style="list-style-type: none"> - June 2011, the Commission issued a Green Paper² to launch a broad public debate concerning the EU export control system; - January 2013, publication of the Staff Working Document³ identifying the main issues raised by stakeholders and exploring possible evolutions towards a more integrated EU export control system; - October 2013, publication of the Report of the European Parliament and the Council⁴ on the implementation of Regulation 428/09.
<p>2. Export controls in a changing security, technological and economic environment: the need for an export control policy review; 2.1 Evolving and new security risks and threats; 2.2 Rapid technological and scientific developments; 2.3 Global supply chains and the level-playing field.</p>	<p>Description of new threats and challenges that have appeared since the adoption of the Regulation 428/2009</p>
<p>3. Beyond materiality and borders: towards an integrated risk-based strategic trade control system; 3.1 Priority 1: Adjust to an evolving security environment and enhance the EU contribution to international security; 3.2 Priority 2: Promote export control convergence and a global level-playing field; 3.3 Priority 3: Develop an effective and competitive EU export control regime; 3.4 Priority 4: Support effective and consistent export control implementation & enforcement.</p>	<p>List of priorities and identification of options</p>

¹ « Every three years, the Commission shall review the implementation of this Regulation and present a report to the European Parliament and the Council on its application, which may include proposals for its amendment (...) ».

² COM(2011) 393 of 30 June 2011.

³ SWD(2013)7 of 17 January 2013.

⁴ COM(2013) 710 of 16 October 2013.

4. Conclusion	Need for <i>a more systematic exchange of risk information and coordination between licensing and other authorities as well as engagement with the private sector and close international cooperation.</i>
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Summary of Commission's priorities

The Commission's communication identifies, in its third part, **priorities** that shall be taken into consideration in the Regulation reviewing process:

- To adopt a **human security approach** to enlarge the notion of “strategic” items (further than military and WMD potentials end-uses). That will would strengthen the coherence with other security trade controls and reinforce convergence with international trends (e.g. ATT and the UN Firearms Protocol);
- To develop a **smart security** policy through:
 - o The development of an EU technological rapid reaction capacity (improving technical discussion on control lists and on potential de-control of items too obsolete or widely available commercially);
 - o The design of a EU response to the use of cyber-space for proliferation activities;
 - o The strengthening of legal basis and the upgrading of certain control modalities in order to cover all aspects and actors in the chain of controls and to address divergent applications of controls and related vulnerabilities;
- To promote specific strategy on **immaterial control** to face ITT challenges (specific tools to facilitate the free flow of technology and focusing on pre-transfers control provisions) and need to clarify control on dual-use research (raise awareness through targeted and coordinated outreach for academic research communities, preparation of a code of conduct for scientists);
- To promote **convergence** towards global and effective controls for global supply chains in order to remove the challenge for industry of concurrent compliance with differing regulations and support a level playing-field. It involves:
 - o Regular update of EU control lists to minimise distortions of competition associated with out-dated controls;
 - o Minimise delays and distortions in the licensing architecture and process. It could include:
 - Regular review of NGEAs and discussion of their possible transformation into EUGEAs;
 - o Shift towards open licensing through the introduction of additional EUGEAs;
 - o Review of the parameters for existing EUGEAs and harmonisation of some licensing conditions (e.g. validity period of individual licences and of denials);
- Promote the **global convergence of export** controls with a view to facilitating trade in dual-use items;
 - o Coherent, comprehensive and unified EU representation in the regimes;
- Addressing the **asymmetric implementation** of controls in order to minimise distortions of competition and transactions costs associated with controls within the EU;

- Development of a common risk management framework;
- Harmonisation of the notion of catch-all controls and the strengthening of consultation to ensure their EU-wide application and reinforce a policy of no-undercutting;
- **Re-evaluate intra-EU transfer controls** in order to minimise remaining barriers in the Single Market (e.g. review of Annex IV and introduction of UEGEAs for intra-EU transfers);
- **Developing a more integrated implementation and enforcement framework:**
 - Optimising the use of resources and keeping administrative costs under control, through: enhanced structured exchange of information between export control authorities (e.g. the secured IT infrastructure “DUeS” could be expanded to support enhanced information sharing);
 - Enhanced strategic and operational cooperation with enforcement agencies (e.g. customs) and between different EU institutions and Member States;
 - Improved coherence between different EU institutions and Member States and the identification of synergies between security-related trade control instruments;
 - Development of a targeted EU-wide capacity-building programme and training for relevant officials;
- **Better coordination and understanding between governments and the private sector:**
 - Partnership with the private sector (to set clear private sector compliance standards for use of simplified mechanisms as a privilege granted to reliable exporters, options to promote convergence with customs’ trusted operators programme – AEO to reduce the duplication of controls);
 - Common EU support tools for economic operators (e.g. standardised IT tools and electronics licensing systems);
- Developing **co-operative implementation of controls with external partners** to facilitate a secure trade in strategic items.