



Brussels,  
D(2016)

## **Opinion**

**Title**                                    **DG TRADE – EU Export Control Policy Review: Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 428/2009 (dual-use export control regime)**  
**(draft version of 17 February 2016)\***

### **(A) Context**

The EU export control system is governed by Regulation (EC) No 428/2009 setting up a Community regime for the control or exports, transfer, brokering and transit of dual-use items. The Regulation provides for common control rules, EU control list and coordination of implementation. Controls apply to exports – including electronic transmission - brokering and transit as well as, for some most sensitive items, internal transfers within the EU. Member States need to take certain complementary measures to implement some of its provisions, e.g. in relation to enforcement, and may adopt, in some cases, specific national control measures. This impact assessment report supports the review of the EU export control regime, which is part of the REFIT programme.

### **(B) Overall opinion: POSITIVE**

**The Board gives a positive opinion, on the understanding that the report will be significantly improved with respect to the following key aspects:**

- 1) Clarify the policy context of the export control regime and describe the link with international EU obligations in the area.**
- 2) Improve the problem definition, including by enhancing the focus on issues specific for the export control of dual-use items. Demonstrate the magnitude of the problem, underpinning it with available evidence.**
- 3) Improve the intervention logic and the linkages between different parts of the report (problem – objective – options).**
- 4) Deepen the analysis of impacts, quantifying them wherever possible. In particular, strengthen the REFIT conclusions – i.e. in relation to the cost-efficiency, simplification/burden reduction potential and SME impacts of the initiative.**
- 5) Specify performance indicators and monitoring provisions that will allow for an efficient and effective evaluation of the initiative in the future.**

**The lead DG shall ensure that these recommendations are integrated in the report prior to launching the interservice consultation.**

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\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

### **(C) Main recommendations for improvements**

**(1) Clarify the policy context.** The report should better explain how the export control regime of dual-use items fits with the overall policy context, in particular in relation to the wider aspects of the security trade instruments and the EU international obligations. It should be described which elements of the control regime are defined at international, EU, and national level. The effectiveness and the efficiency of the existing EU export control regime should be further analysed (given the low number of denials) and its shortcomings clearly identified. It should be clarified what the margin is for possible new EU action, given already existing international arrangements.

**(2) Better demonstrate the problem.** The definition of the problem should more clearly focus on issues specifically related to the export control regime in the EU and disentangle the issues linked to the design of the regulation from those linked to the implementation of the regulation. Moreover, the report should better demonstrate the magnitude of the problems identified. For instance, the issues relating to the circumvention of fraud and the degree of illicit trafficking should be better demonstrated. The diverging situations in Member States should also be elaborated on, including on what impact they have on the EU internal market, the different concentration of dual-use trade in different Member States, and the level playing field.

**(3) Improve the intervention logic.** The problems should be clearly inter-linked with the problem drivers, policy objectives and policy options. The report should make a clearer distinction between the complementary and alternative elements in the composition of the policy options, which should be rendered more specific and measurable. The pros and cons for integrating elements of option 2 in the preferred option should also be further elaborated.

**(4) Reinforce the analysis of the impacts.** The magnitude of impacts should be better presented, using available data and evidence. The links with the REFIT objectives should be strengthened. In particular, the costs and benefits comparison should be deepened, including the indications on potential cost savings. In addition, the prospective administrative burden reduction should be better analysed and substantiated with evidence, especially regarding the potential effects on the SMEs (such as reduction of the export control management costs). The report should make a greater effort in quantifying the potential impacts – or, if this is not possible, in explaining why.

**(5) Better plan monitoring and evaluation.** The report should revise the proposed evaluation indicators to better link them with the policy objectives. Moreover, the foreseen monitoring and evaluation provisions should be clarified, also with a view to addressing data gaps (e.g. on trade flows and licensing) for future policy evaluations and revisions.

*Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.*

### **(D) Procedure and presentation**

The presentation of the report should be improved to serve as a clear basis for discussion for the decision-makers. The description of the problem should be made more readable, for example by clarifying the division between problem definition and policy options.

### **(E) RSB scrutiny process**

Reference number	2015/TRADE/027
External expertise used	No
Date of RSB meeting	16 March 2016

