

Non-paper for improved EU coordination on export controls

In the European Economic Security Strategy of June 2023¹, the European Commission is proposing "better EU coordination on export controls of dual-use items". The Netherlands supports this objective.

Reasons include increased impact of uncontrolled exports of advanced technology on (inter)national security, the increased military potential of sensitive technologies, the challenge in multilateral export control regimes to agree on concrete measures for sensitive technologies by consensus, and the need to avoid fragmentation of national controls within the EU.

Given the above mentioned objective and NL's recent experience in establishing a national control measure, NL would like to constructively engage in discussions with EU partners about improving the coordination in the European export control framework, without questioning the existing competencies at its core and without proposing changes to the current regulation².

Below we provide some concrete suggestions to enhance coordination within the framework of articles 9 and 10 of the EU Dual Use Regulation (DUR) to address these challenges. Particularly in light of the White Paper on Export Controls which was presented at the 24th of January, 2024.³

1. Adding an EU-dimension to the application of article 9 and 10

We have identified several opportunities to facilitate enhanced EU coordination in four different phases of the article 9 and 10 process. The primary focus of all phases is inter-EUMS cooperation and information sharing to which the COM could contribute in its capacity as facilitator.

Phase 1: Orientation

Article 9 of the DUR enables Member States to create a national control list for reasons of public security. These reasons are often not limited to an individual exporter or country, or to EU borders. The first proposal would therefore be to consult the EUMS about the problem analysis prior to a Member State initiating a national control list, and to explore if there is a common sense of urgency or a common sense of interest to (jointly) establish national controls. The degree of cooperation can vary from other EU Member States being informed to becoming a 'co-sponsor' of the national measure. To this end, we propose that the initiating Member State circulates amongst the particular EU-MS that are part of the specific supply chain a questionnaire that introduces the key elements of the national control list initiative and inquires after the Member States' appreciation of the initiative and potential EU-wide effects. Key elements would include the problem analysis, the intended scope of the measure, a stakeholder analysis, the impact on national industry and possible impact in other EUMS, and – if applicable – the relation with (pending) proposals in multilateral export control regimes.

Phase 2: Design

A method for ensuring better EU coordination is that the initiating Member State regularly updates the EU-27 about the status of the national measure. This would enable other EUMS – especially those who in phase 1 have communicated the wish to be involved – to follow the progress of the measure, to interpret the potential national and EU-wide effects, and to assess if establishing their

¹ Joint Communication on the European Economic Security Strategy, JOIN (2023) 10 final, 20.06.2023, Brussels.

² Regulation (EU) 2021/821 of 20 May 2021 setting up a Union regime for the control of export, brokering, technical assistance, transit and transfer of dual-use items (recast)

³ White Paper on Export controls, COM(2024) 25 final, 24.1.2024, Brussels.

own national control list seems reasonable. Regular information exchange on the draft control measure would also allow other EUMS to consult with their customs authorities at an early stage on implementation and enforcement aspects. This phase of the procedure would also be the right moment to secure a level of coordination on the use of Export Control Classification Numbers. Further discussion is needed about the most suitable platform to exchange information, as current systems and platforms of information exchange in the EU (DUWP, DUCG, DUEs) might not meet sufficient standards of confidentiality for these deliberations.

Phase 3: Publication

Once the initiating MS has published its national control measure that establishes a national control list, the necessary steps according to article 9 have to be taken in order to enable the mechanism linking article 10 with article 9. Apart from these legal requirements it is useful when the initiating MS shares an English (courtesy) translation with the other EUMS. In addition, the initiating MS can share the following deliverables to inspire implementation in other EUMS: i) press releases, ii) information notes on the details of the measure for industry, and iii) instructions for the national customs authorization on implementation and enforcement. Vice versa, the other EUMS could share their appreciation of the published national control measure and the intention to either take or not take national action in the form of the application of article 9 and/or article 10.

Phase 4: Implementation and enforcement

After the national control measure has entered into force, there is no legal obligation for other EUMS to also implement or enforce this measure. For the effectiveness of the national control measure, and in light of the aim and objectives of the shared customs area of the Union, it is necessary that exporters in other EUMS cannot circumvent the measures taken by the initiating MS. To this end, we propose that the initiating MS is notified about the way in which customs authorities have been informed about the national measure.

2. Improving institutional coordination

- On an institutional level we support the idea to have dedicated high level export control meetings at (deputy) DG level, complementing the technical and policy work that is taking place within the mandate of the Dual-Use Working Party. It is important that this meeting will be chaired by a Member State, such as the Council Presidency, and work in close coordination with the Trade Policy Committee Full Members. The objective is to enable strategic discussions about export control of sensitive technologies in the EU, thereby filling a gap between the technical discussions in the DUWP about operational aspects of export control and discussions at the political level about the role of export control in the current international landscape. This format will not have a new decision-making mandate.

- We see potential in licensing/enforcement authorities to increase information sharing and become more involved in exchanges with Dual-Use experts at EU level, e.g. with a regular joint meeting between DUWP and the Law Enforcement Working Party/Customs with DG TAXUD.