



**AeroSpace and Defence
Industries Association of Europe**

ASD POSITION PAPER

ON

THE REVIEW OF THE DUAL-USE EXPORT CONTROL

POLICY OF THE EUROPEAN UNION

22 October 2014

About ASD

ASD represents the Aeronautics, Space, Security and Defence industries in Europe. Based in Brussels, the organisation's membership today comprises 15 major European aerospace and defence companies and 27 member associations in 20 countries (Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey and the UK). These industries reach a turnover of 197.3 billion euros, invest 20 billion euros in R&D, employ 778,000 people and count over 3000 companies, 80,000 suppliers, many of which are SMEs.

Background

In April 2014, the European Commission (EC) issued its “Communication from the Commission to the Council and the European Parliament on the Review of export control policy: ensuring security and competitiveness in a changing world¹”.

In January 2013, the EC issued a Green Paper² asking for stakeholders comments through a consultation process. ASD responded to the Green Paper, and supplied comments and suggestions.

In principle, ASD supports and welcomes the Commission’s Communication regarding a review of the current Regulation 428/2009 governing the control of exports of dual-use goods to meet the future security needs of the European Union. We are pleased that the policy review recognises the need to continue to nurture a vibrant and profitable industrial base that will contribute positively to the economic health of the European Union, securing much needed jobs and avoiding undue obstacles to the free flow of knowledge and the global competitiveness of EU science and technology.

Suggestions for amending the current Regulation should aim to **simplify the current Regulation**, to **strengthen the competitiveness** of EU industries and to **reduce the disparities** between Member States through an emphasis on greater harmonisation of practices, procedures and decision-making.

In addition, ASD believes it is of importance to keep today’s pragmatic work share balance between the EC and Member States, in the areas of “licensing”, “controlling” and “auditing”. It is important that Member States retain full competence to grant or deny licenses; control transactions and stakeholders through audits and inspections. Any centralization of these functions is likely to add complexity and compliance risks for industry.

ASD supports, and will promote, initiatives that are pragmatic and based on best practices from Member States which aim to harmonize, promote and simplify both exports and intra-community transfers.

While issues concerning membership and participation in the export control regimes, such as the Wassenaar Arrangement and the Missile Technology Control Regime, are settled by the regimes, the Member States and the Commission, we believe that any efforts to provide the Commission with greater access should not be done to the detriment of the efficiency of the regimes themselves. This applies in particular to the maintenance of up-to-date and relevant control lists that have wide international acceptance, including timely the implementation of changes within the export control regimes, as foreseen in the recent Council Regulation 599/2014 of 16 April 2014.

¹ 24.4.2014 COM(2014) 244 final

²EC Green Paper “The dual-use export control system of the European Union: ensuring security and competitiveness in a changing world”, COM(2011) 393 final, 2011-06-30.

Analysis

The Communication contains a number of interesting suggestions that ASD believes are worth pursuing.

In general, we support the idea of a more prominent role for industry in a risk-based approach to export controls, and we fully acknowledge the role that industry can play in the fight against non-proliferation. For a partnership to flourish on an equal footing, an equitable balance needs to be struck between extra burden in some areas and relaxation in others. One approach to consider could be to pursue the U.S. approach of “*higher walls around fewer items*”, so as not to unduly burden industry. This is especially important for the SME community.

We welcome the recognition that a structured engagement with industry would be of benefit. For example, sharing industry’s perspectives on a full understanding of the implications of new and emerging technologies or on the identification of items that would be ripe for de-control.

ASD believes that industry needs to be fully involved in the examination of the legal framework for, and guidance on, the operation of Intangible Technology Transfers (ITT) controls. Industry needs a consistent approach to the operation of controls in this area, not just within the EU but beyond. We would be able to offer solutions based on our experience of complying with a number of current national export control regimes, and we believe it is also important to protect, wherever possible, investments that have already been made to facilitate compliance.

We consider it important that decisions to update the common List of Dual-Use Items subject to export controls should remain in conformity with the obligations and commitments that Member States have accepted as members of the relevant international non-proliferation regimes and export control arrangements.

We do not favour an expansion of the Regulation to cover the control of export of items that are currently outside the scope and purpose of the non-proliferation regimes.

ASD sees merit in initiating a regular review of National General Export Authorisations (NGEAs) to ascertain whether it would be appropriate to transform them into EUGEAs. We also view the introduction of additional EUGEAs as a positive step.

We are also in favour of re-evaluating intra-EU transfer controls to minimise barriers. In particular a critical review of Annex IV is needed. For items that remain on Annex IV, post review, we would recommend that, in most cases, they should be included on a EUGEA.

Options to promote convergence with customs' "trusted operators" programme (AEO), which reduces the duplication of controls and offers cost-effective avenues for both operators and administrations, are viewed as positive. Another option would be to include the concept of a “Certified Company” along the lines of those operated for intra-Community transfers of defence products.

We are also in favour of more ‘in-reach’ to EU industry and the preparation and publication of guidelines and the availability of e-learning tools that would assist companies in undertaking

internal company training. Areas such as goods under control, “catch all” and red flag indicators would benefit from inclusion.

ASD supports the idea of developing an EU-wide capacity-building programme, training for officials in key areas and the enhancement of the ‘Pool of Experts’ to not only strengthen the EU chain of control, but also to create a common understanding of the application of the Regulation. We would advocate regular refresher training courses as part of the programme.

Concerns

However, ASD has reservations about certain concepts outlined in the EC Communication. ASD suggests that a more developed argumentation is needed before being able to provide a final opinion on the following issues.

As discussed above, in reference to the control list, we believe that the purpose of the Regulation should continue to be: to prevent proliferation, through the control of items (including software and technology) which can be used for both civil and military purposes, as agreed by the non-proliferation regimes. The concept of “human security” would appear to take the Regulation in an entirely new direction with the possibility of unilaterally adding items to the control list that are not accepted internationally. Arguably, human rights concerns are already part of the national licensing processes as per Article 12(c) of the Regulation. Current sanctions regimes often include a list of items that could be used for internal repression.

Consequently, we ask that other equipment, which could be used for human rights abuses in certain circumstances, should be added to that list and controlled on a destination-specific basis, rather than be subject to the provisions of the Dual-Use Items Regulation that applies to all destinations.

We are sceptical about the need to develop an additional common suite of support tools for economic operators. Many Member States already have electronic licensing systems and there are already a range of tools available to economic operators that support compliance efforts, should the volume of business warrant such an investment.

While it may be useful to compile and publish information on the solutions that are currently available, we do not recommend that a particular “*one-size-fits-all*” solution should be either proposed or imposed.

We fully understand and support the need for exchange of relevant information between Member States and the Commission, when this supports effective and consistent export control implementation and enforcement.

However we ask that commercially confidential information should be protected throughout the process at all times.

We consider that one important area has not been covered to the extent necessary, namely the reform of competing nation’s export control systems outside the EU. For instance, while the U.S. Export Control Reform (ECR) has predominately been directed towards military items,

there have also been changes on the dual-use side that should be assessed. With globalization also comes a need to achieve a (more) global “level playing field”.

Therefore, it is necessary for the EU to look beyond its borders, and in that context, we welcome the Commission’s commitment to promote the global convergence of export controls to facilitate trade in dual-use items.

ASD also noticed an increased demand for transparency from stakeholders and civil society. In this context, it is important to underline that industry’s reporting obligation results solely from an obligation towards the Member State where it is established.

ASD underlines that industry should not be expected to undertake any form of dual reporting, be it to the Commission or the Parliament. It should be the sole responsibility of Member States to fulfil any requests from EU institutions for further information.

As a last point, we have witnessed an increased use of tariff codes in export control matters, especially when regimes decide on sanctions. The use of tariff codes has its merits, but in order for sanctions to be precise enough for industry and national authorities alike, the use of export control codes should be the norm, so as to precisely target the items that are sanctioned.

In conclusion, ASD and its Members welcome a dialogue with the Commission and the governments of Member States. We believe that it is in the interest of all parties to exchange views, experiences and expertise to achieve the best possible update of the Dual-Use Items Regulation.
