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WHITE PAPER

on Export Controls

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1. INTRODUCTION: WHY A WHITE PAPER?

EU export controls for dual-use items¹ are a key tool for international peace and security as well as the protection of human rights. They ensure that items such as advanced electronics, toxins, missile technology or nuclear components, which have civil but also military uses, do not get into the wrong hands. Dual-use items are therefore subject to authorisations when exported outside the EU, limiting the possibility for such items to be used in war or conflict situations, for breaches of human rights or to enable the proliferation of weapons of mass destruction.

These controls generally derive from the obligations and commitments taken by EU Member States or the European Union as members of international non-proliferation agreements and multilateral export control regimes.² This multilateral approach represents the first best way of developing robust export controls globally. These commitments are then implemented in a uniform manner in the EU.

At EU level, the framework to implement and regulate exports of dual-use goods is set out in Regulation (EU) 2021/821 (the “Dual-Use Regulation”),³ which significantly revised EU dual-use rules in 2021. That revision takes into account rapid technological developments and the increasing militarisation of emerging technologies, ensures more effective implementation and increases coordination between EU Member States’ national export control authorities as well as with the European Commission.

Since the entry into force of the Dual-Use Regulation, the global context for export controls has fundamentally changed. Russia’s war of aggression against Ukraine has been met with unprecedented and rapid deployment of sanctions. This includes swift imposition of export restrictions on dual-use and sensitive items critical for curbing the long-term war efforts of Russia. This has highlighted the need for the EU to have a system of export controls that can deliver fast and in a uniform manner.

At the same time, while important work has taken place at the technical level, the ability of the multilateral export control regimes to deliver new decisions on items subject to controls and to keep pace with technological developments has been hampered by certain members, creating gaps in the adoption of new export controls at multilateral level.

Finally, there has been a multiplication of new national controls on emerging and advanced sensitive technologies by some countries, including EU Member States, outside the multilateral framework, creating a risk of a patchwork of control measures within the EU and fragmentation of the single market. These various developments have exposed Member States to geopolitical pressure and raised questions on the adequacy of the current EU export control framework to effectively contribute to the security of the EU and its Member States.

¹ Dual-use items are goods, software and technology that can be used for both civil and military purposes. However, they do not include items of a purely military nature, such as those listed in the EU Common Military List (OJ C 72, 28.2.2023, p. 2–37).

² The main multilateral regimes under which most EU export controls are agreed are the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement. The EU is a member of one of the existing Multilateral Control Regimes – the Australia Group – and an observer in the Nuclear Suppliers Group.

³ Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (OJ L 206, 11.6.2021, p. 1–461).

Against this background, on 20 June 2023, the Commission and the High Representative (“HRVP”) adopted a Communication on a European Economic Security Strategy.⁴ It calls for more rapid and coordinated action at EU level in the area of dual-use export controls and making full use of the possibilities offered by the Dual-Use Regulation.

The present White Paper responds to that call. It analyses the current situation and makes a number of proposals to address the current challenges, both to foster uniform and effective controls across the EU and to open a discussion with Member States, the European Parliament, and stakeholders, including the business community, on the evaluation of the functioning of the Dual-Use Regulation and the ability of the current framework to meet effectively the EU’s present and future security needs.

2. THE 2021 DUAL-USE REGULATION: STATE OF PLAY ON IMPLEMENTATION

The Dual-Use Regulation strengthened the EU’s capacity to address an evolving security environment, rapid technological developments and the evolution of global supply chains and international trade.

It includes novel provisions to enhance the coordination among Member States in the introduction of new EU controls on cyber-surveillance and emerging technologies, to facilitate low-risk dual-use trade, enhance information exchange among the Member States and with the Commission (including through the development of a dedicated EU electronic licensing platform). It also aims for greater transparency on national licensing decisions by EU Member States as well as consistency in the implementation and enforcement of controls.

These developments are complemented by measures to support EU exporters, including new EU General Export Authorisations for encryption technologies and for intra-company technology transfers, alongside streamlined procedures for licensing. The Regulation also acknowledge the key role of the industry as “the first line of defence”. It also mandates the Commission and Member States to foster cooperation with international partners in an effort to uphold the multilateral export control systems as key elements of the international trade and security infrastructure.

Actions to roll out these provisions are well underway. The Commission and the Member States have developed guidelines on internal compliance programmes and research compliance, as well as to ensure transparency about national licensing decisions as part of Member States’ annual reports.⁵ The Commission and Member States are developing guidelines to support exporters’ due diligence and enhance controls on exports of cyber-surveillance items⁶ as part of the EU’s actions to prevent trade from being used in connection with internal repression

⁴ Joint Communication to the European Parliament, the European Council and the Council on a “European Economic Security Strategy” (JOIN/2023/20 final).

⁵ See Commission Recommendation 2021/1700 on internal compliance programmes for controls of research involving dual-use items under Regulation (OJ L 338, 23.9.2021, p. 1–52) and Commission Recommendation 2019/1318 on internal compliance programmes for dual-use trade controls (OJ L 205, 5.8.2019, p. 15–32). The Commission and Member States continue working on the more effective implementation of controls on transfers of intangibles and technology. The Guidelines on data collection and transparency are planned for publication beginning of 2024.

⁶ The Guidelines on exports of cyber-surveillance items will be published in the first quarter of 2024. Concerns on the use of cyber-surveillance items have for instance led the European Parliament to establish a special Committee (The Pegasus Inquiry Committee) that adopted a resolution in June 2023 which also underlined the need for further strengthening of controls on the export of cyber-surveillance items under the Dual-Use Regulation.

and/or the commission of serious violations and abuses of human rights and international humanitarian law.⁷

The EU has also stepped-up cooperation with international partners as part of its efforts to uphold international security, for instance under the EU-U.S. Trade and Technology Council and the development of a global coalition coordinating export restrictions on sensitive items in response to Russia's full scale invasion of Ukraine.

One of the most innovative elements of the Dual-Use Regulation has been the introduction of a mechanism (in Articles 9 and 10) to facilitate coordination of national export controls at EU level. This is described in more detail in sections 3 and 4 below.

Despite good progress on the implementation of various aspects of the Dual-Use Regulation, there is still work to do to make full use of its potential and to optimise its contribution to peace and security in the current geo-political context.

3. RECENT DEVELOPMENTS IN THE FIELD OF EXPORT CONTROLS

This chapter outlines recent developments that show the limits of the current Export Control framework and its ability to mitigate risks that dual-use exports present for the security and the integrity of the internal market. The Commission sees a need for more agile and effective EU export controls that serve national and EU's foreign and security policy interests and values, while being firmly anchored in the Union's common commercial policy.⁸

3.1. Russia's impact on the functioning of the multilateral export control regimes

For decades, the established multilateral export control regimes have provided the necessary export control measures that today underpin the EU export control framework, thereby responding to the Union's security policy objectives. The EU is committed to preserving the effectiveness of, and strengthening, multilateral regimes.

The multilateral system rests on the ability of the regimes to propose and agree new items for export controls. Some of the multilateral export control regimes (Wassenaar Arrangement, Missile Technology Control Regime and Nuclear Suppliers Group) are under significant pressure as Russia as a member is reported to be hampering the adoption of new controls, thus

⁷ Other actions undertaken by the Commission and the Member States include: (i) setting up an “Emerging Technology Expert Group” (ETEG) to exchange information with Member States on risk assessments for emerging technologies; (ii) setting up an Enforcement Coordination Mechanism to support the work of national law enforcement agencies throughout the EU; (iii) developing the Dual-use electronic System (DUeS) to enhance information exchange between relevant services in the Commission and the Member States; and (iv) enhancing industry outreach and compliance as part of a “partnership with the private sector” e.g. through the organisation of a regular Export Control Forum.

⁸ The European Court of Justice confirmed in case *Leifer* that rules whose effect is to prevent or restrict the export of certain products fall within the scope of the common commercial policy and that the fact that the restriction concerns dual-use goods does not affect that conclusion as the nature of those products cannot take them outside the scope of the common commercial policy (Judgment of the Court of 17 October 1995, *Criminal proceedings against Peter Leifer, Reinhold Otto Krauskopf and Otto Holzer*, C-83/94, ECLI:EU:C:1995:329, paragraphs 10 to 11). In case *Werner*, the Court confirmed these findings and further explained that a measure whose effect is to prevent or restrict the export of certain products, cannot be treated as falling outside the scope of the common commercial policy on the ground that it has foreign policy and security objectives (Judgment of the Court of 17 October 1995, *Fritz Werner Industrie-Ausrüstungen GmbH v Federal Republic of Germany*, C-70/94, ECLI:EU:C:1995:328, paragraph 10).

leaving gaps in the system.⁹ Given the links between the Annex I of the Dual-Use Regulation and the multilateral regimes, it also undercuts the effectiveness and comprehensiveness of the EU's controls.

As decision-making in these regimes takes place by consensus, Russia – like any other member – holds veto power over any initiative to amend the control lists, the regimes, or their membership.¹⁰ It is reported that Russia has blocked the adoption of important controls on emerging technologies in the Wassenaar Arrangement,¹¹ in practice hindering both the ability of the regime to deliver new decisions and, as a result, preventing a related update of the EU dual-use export control list. This raises serious questions on the capacity of multilateral export control regimes to deliver in times of serious geo-political tensions, and to ensure the security of the EU and the other members of the multilateral arrangements. The current blockage of the multilateral regimes seems also to have prompted some members to take individual actions that are not anchored in those regimes, thus increasing the risk of fragmentation of the Single Market and, more generally, reducing the effectiveness of the multilateral export controls system.

3.2. Increased recourse to unilateral export controls internationally

Since the 2021 Dual-Use Regulation, there has been increased use of unilateral export controls, in some cases due to expansive national security considerations and, in others, with the aim to address new risks posed by emerging technologies (see box below).

Examples of unilateral export controls by third countries

On 7 October 2022, the US adopted unilateral export controls on advanced and high-performance computing chips and related software, as well as advanced semiconductor manufacturing equipment. In response to these measures, China sought consultations with the US under the dispute settlement mechanism of the WTO in December 2022.¹² The US further strengthened those measures in an update published on 17 October 2023.¹³

⁹ Wolf, K., ‘Testimony before the Senate Committee on Banking, Housing and Urban Affairs “Advancing National Security and Foreign Policy Through Sanctions, Export Controls, and Other Economic Tools”’ 2023, p. 13. See also Chorzempa, M. and von Daniels, L., ‘New US Export Controls: Key Policy Choices for Europe’, *Stiftung Wissenschaft und Politik*, 2023, p. 7.

¹⁰ Gehrke, T. and Ringhof, J., ‘The power of control: How the EU can shape the new era of strategic export restrictions’ *European Council on Foreign Relations*, 2023. Benson, E. and Putnam, M., ‘Export Controls and Intangible Goods’ *Center for Strategic and International Studies*, 2023.

¹¹ Wolf, K., ‘Testimony before the Senate Committee on Banking, Housing and Urban Affairs “Advancing National Security and Foreign Policy Through Sanctions, Export Controls, and Other Economic Tools”’ 2023, p. 13.

¹² Request for consultations by China: United States - Measures on Certain Semiconductor and Other Products, and Related Services and Technologies (WT/DS615/1, G/L/1471 S/L/438, G/TRIMS/D/46 IP/D/44).

¹³ Bureau of Industry and Security, U.S. Department of Commerce, ‘Commerce Strengthens Restrictions on Advanced Computing Semiconductors, Semiconductor Manufacturing Equipment, and Supercomputing Items to Countries of Concern’, Press Release of 17 October 2023, available at: <https://www.bis.doc.gov/index.php/documents/about-bis/newsroom/press-releases/3355-2023-10-17-bis-press-release-acs-and-sme-rules-final-js/file>.

On 23 May 2023, Japan adopted export controls on items for the manufacturing of semiconductors.¹⁴

In 2023, China adopted a series of export controls. In particular, on 3 July 2023, it adopted controls covering products containing gallium and germanium; on 31 July 2023, on advanced unmanned aerial vehicles (UAVs); and, on 1 September 2023, on graphite and products containing graphite.

Where controls such as these have extra-territorial legal effects, they can have ramifications on global value chains and have an impact the capacity of EU businesses to export key cutting-edge technologies and components, including dual-use items. This is particularly the case where such controls, even when justifiable for reasons of national security of the country proposing them, cover commercially available technologies outside those controlled through the multilateral regimes.

3.3. Recent national export controls by EU Member States

Currently, the European Union does not have the necessary legal provisions to adopt at EU level uniform export controls independently from what is adopted in the multilateral regimes, except in very limited areas.¹⁵

Prior to the 2021 Dual-Use Regulation, Member States notified their national measures¹⁶ to the Commission, which were subsequently published on an annual basis in the EU Official Journal in the form of an information note.

The entry into force of the 2021 Dual-Use Regulation created a new way for the publication and coordination among Member States of “national control lists”¹⁷. Pursuant to Article 9 of the Dual-Use Regulation, the Commission on one hand publishes an annual information note including all “national measures” notified to it by Member States, and on the other hand, a so-called “EU compilation of national control lists”.¹⁸

¹⁴ Amendment to the “Ministerial Ordinance Partially Revising the Ministerial Ordinance Specifying Goods and Technologies Pursuant to the Provisions of the Appended Table 1 of the Export Trade Control Order and the Appended Table of the Foreign Exchange Order”, available at: <https://www.meti.go.jp/policy/anpo/law09-2.html#230523>.

¹⁵ The 2021 Dual-Use Regulation introduced the possibility of new EU autonomous controls for cyber-surveillance items (Article 5). However, this provision remains untested, is limited to cyber-surveillance items and would require coordinated actions by all Member States. The 2021 Dual-Use Regulation also introduced the possibility for Member States to coordinate controls under their national control lists (Articles 9 and 10), but this has proven unlikely to deliver uniform controls as described in section 4.1.

¹⁶ “National measures” refer to actions of various kinds taken by Member States including, for example, national general export control authorisations, designation of competent authorities, designation of customs offices, but also national control lists described hereunder.

¹⁷ National control lists refer to measures adopted by Member States pursuant to Article 9 of the Dual-Use Regulation, whereby they decide to subject to authorisation dual-use items that are not listed in Annex I of the Dual-Use Regulation and hence not subject to any control. Member States are entitled to adopt such national control lists for reasons of public security, including the prevention of acts of terrorism, or for human rights consideration.

¹⁸ The last such information note was published as “Information on measures adopted by Member States in conformity with Articles 4, 5, 6, 7, 8, 9, 11, 12, 22 and 23 [of the Dual-Use Regulation]” (OJ 2023/C 208/06). The EU compilation was for the first time published on 20 October 2023 as a “Compilation of national control lists under Article 9(4) [of the Dual-Use Regulation]” (OJ C C/2023/441).

While the publication of “national measures” has no particular legal effect in other Member States, the publication of the EU Compilation of national control lists gives other Member States the possibility to apply such controls directly to their exporters. In other words, they can also decide to subject to authorisation (and potential denial) the items listed in the Compilation of national control lists at the initiative of other Member States. This mechanism aims to facilitate a quicker introduction and coordination of national export controls, so that the Union can react rapidly to the serious misuse of existing technologies or to new risks associated with emerging technologies (see section 4.1.).

In the first half of 2023, several Member States have adopted national control lists (see below) which have triggered for the first time this new coordination mechanism. Some of these national control lists for instance seek to limit the export of critical technologies outside the Union, in some cases building on the discussions taking place within the multilateral regimes.¹⁹ The Commission understands that some Member States may be considering the possible need for national controls given the current difficulties to agree on new control items at the multilateral regimes. The increase of national controls seen in 2023 may therefore continue, which amplifies the need for enhanced efforts to ensure coherence and effectiveness.

Examples of National Control Lists adopted or proposed by Member States

On 23 June 2023, **the Netherlands** adopted a national control list setting out new export controls on semiconductors manufacturing equipment. Such controls reflected the rapid advances in semiconductors technology and involved discussions with international partners.²⁰

On 31 May 2023, **Spain** adopted a national control list imposing new export controls on quantum computing, additive manufacturing and other emerging technologies for reasons of public security.²¹

On 28 June 2023, **Lithuania** adopted a national control list prohibiting exports of a list of customs classification encompassing, among others, aircraft engines, machinery as well as measuring and electronic devices. These controls are aimed at addressing the threat to the security of Lithuania posed by the military aggression of foreign states against Ukraine and sought to reduce this threat by limiting technical capabilities of foreign states to wage a war

¹⁹ To date, three Member States have notified to the European Commission the adoption of national control lists proposed for coordination of controls by Member States, with two of them already included in the Compilation of national control lists published on 20 October 2023.

²⁰ Letter by the Netherland’s Minister for Foreign Trade and Development Cooperation of 8 March 2023 to the Dutch Parliament, available at: <https://open.overheid.nl/documenten/oep-7b25ba07017fbcc4a9d285cc013849f6516f03bd/pdf>.

²¹ Order ICT/534/2023 of 26 May 2023, available at <https://www.boe.es/boe/dias/2023/05/31/pdfs/BOE-A-2023-12785.pdf>

of aggression in Ukraine.²² The June Resolution was amended recently on 15 November 2023.²³

On 10 November 2023, **Finland** launched a public consultation on draft national measures that, if adopted, would include controls on emerging technologies such as integrated circuits, quantum computers and additive manufacturing equipment.²⁴

4. ANALYSIS OF THE CURRENT FRAMEWORK

4.1. Risk of a patchwork of export controls in the European Union

Already before 2021, Member States had the possibility to adopt national controls outside the EU framework. However, the evolving geopolitical context, the increasing recourse to export controls and the emerging dynamics in the implementation of coordinated controls under the 2021 EU Dual-Use Regulation make more visible the risk of a patchwork of export controls for the European Union having a negative impact on the security interests of the Union and its Member States.

The publication of a first EU Compilation of national control lists on 20 October 2023 represented an important step for EU export controls. It offers, for the first time, the possibility for Member States to coordinate their national export controls at EU level, further to the procedures set out in Articles 9 and 10 of the Dual-Use Regulation. Nevertheless, the initial implementation by Member States of these provisions suggest that there are potentially important shortcomings which may impact the effectiveness of the EU export control system.

First, there is a lack of transparency and insufficient consultation. While the current framework provides the possibility for Member States to propose national control lists, it does not require them to inform and consult each other or the Commission prior to their adoption. Such consultation and broader consideration of possible EU-wide impacts of national controls are particularly important as they could be relied on by other Member States, impact businesses and supply chains in other Member States or trigger reactions from third countries against the EU as a whole or several Member States, and not just the Member State adopting the control.²⁵

Second, there is no certainty about how or when other Member States may take up the controls published in a Compilation of national control lists. The Member State adopting the original control will not know if it has been taken up by others, nor will it know about decisions to

²² Resolution No. 512 of 28 June 2023, ‘On the Application of National Control Measures Pursuant to Article 9 of Regulation (EU) 2021/821 of the European Parliament and Council’, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/e136d18116b211eea9b3de7dd350a34e?positionInSearchResults=6&searchModelUUID=f43633e4-8d0d-4761-b5f5-adb027d53453>.

²³ The November 2023 Resolution is available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/0f49a4e0857011ee9ee3e4a7f62b7a26?positionInSearchResults=2&searchModelUUID=e121fc54-2c6c-4133-b8f0-26af9214c826>

²⁴ Public consultation available at: <https://valtioneuvosto.fi/hanke?tunnus=UM008:00/2019>.

²⁵ To note that it is the Commission that would be called upon to defend the measures of an individual Member State on behalf of the EU if those measures were challenged by a third country at the World Trade Organization. Equally, it would be the EU acting under the new Anti-Coercion instrument in the face of third country action in response to Member State export controls, seeking to change those Member State measures or ensure that they would not be followed at EU level or by other Member States.

authorise exports in another Member State based on its controls.²⁶ A majority of Member States are implementing, or planning to implement, controls on the published Compilation of national control lists as “catch-all” measures.²⁷ While this is a fully legitimate choice of the Member States concerned, such implementation does not create a generally applicable rule nor one that is made public. If each exporter has to be informed individually in the framework of a “catch-all” procedure, it is potentially administratively heavy and may not capture all possible of exporters of the relevant item.

Third, even if the Dual-Use Regulation gives the possibility for Member States to take over other Member States export controls, their national law may not allow them to do so, or at least limit their ability to publish such measures.²⁸ Consequently, there is no publicly available information about which national controls apply in which Member State. This has a negative impact on their capability to contribute to predictable, timely and uniform implementation of export controls by all Member States.

Fourth, this situation presents a risk of “forum shopping”. National export controls adopted by one Member State only apply to exports leaving the EU territory, but not to trade within the internal market. A Spanish exporter may find that their dual-use products cannot be exported outside the Union from Spain to a third country, but may be sold to customers in another Member State, which does not apply a similar control. It could then legally be re-exported from there to the third country. This would clearly undercut the national controls and render them ineffective. It could also place companies located in the Member States where controls apply at a competitive disadvantage. Additionally, it may lead to importers changing their supply chains and even deter Member States from introducing certain controls for commercial reasons.

In light of the factors above, the Commission sees a risk that the existing coordination mechanism among Member States cannot deliver the uniform, timely and effective controls system that the EU needs. This should be addressed in order to enhance European and global security, ensure a more level playing field and protect the integrity of the internal market; especially in times of significant geopolitical tensions and blockage of the multilateral regimes.

4.2. Lack of a common approach to the Union’s security and trade policy objectives in the area of export controls

Decision-making in the field of export controls is currently led by Member States in light of their national security implications. For example, the introduction of new export controls is mostly determined by Member States within the multilateral export control regimes in the absence of a common EU voice. Even the limited alternative routes introduced by the Dual-

²⁶ Under the Dual-Use Regulation, Member States that deny an export on the basis of a national control list of another Member State are required to inform the Commission and the other Member States of such decision. However, Member States do not need to inform about the absence of controls or the authorisation of exports.

²⁷ “Catch-all” controls are generally understood to be controls that are applied by Member States to items that are not listed in Annex I to the Dual-Use Regulation (so called “EU control list”), so the controls apply to items that have not yet been agreed under the multilateral control regimes. Most notably, Article 4 of the Dual-Use Regulation requires exporters to seek an export authorisation if they are informed by the competent Member State authority that an item that they export may be intended for one of certain sensitive end-uses detailed in Article 4. Such information generally takes the form of a non-public individual notification to the relevant exporter.

²⁸ Some Member States do not have the legal basis to adopt national controls under Article 9. Additionally, some Member States’ national laws do not allow them to adopt public and transparent controls under Article 10. Rather, they need to resort to individual non-public notifications to exporters.

Use Regulation for new controls²⁹ depend on the initiative of Member States and their voluntary coordination on the basis of their national risk assessments.

The Commission is committed to strengthening its support for the work of multilateral regimes as the best route to identify and accept the export controls that underpin the EU export control framework.

Nevertheless, the recent developments described above raise the question whether an additional legal provision should be considered to allow the possibility of introducing new common EU controls in a faster, streamlined fashion outside the option of the ordinary legislative procedure. This would address the Union's security and trade policy objectives. This could also remediate the current risks of fragmentation and allow for a swifter EU-wide reaction, where needed, to security risks as regards emerging technologies which have not yet been controlled at multilateral level. Additionally, it would increase the ability of the EU to act jointly and geopolitically in response to third countries' calls for new export controls on emerging technologies. It would also allow a common EU risk assessment of controls that have an impact on the EU's trade relations and on supply chains across the EU.

4.3. Lack of a common EU voice internationally

While export controls agreed in multilateral regimes form the bedrock of EU export controls and are regularly incorporated in lists of dual-use items under the Dual-Use Regulation, Member States' membership in such regimes is uneven.³⁰ As a result Member States that are not members of some of the multilateral regimes cannot take part in the decision-making processes for new controls which are subsequently incorporated under the Dual-Use Regulation. They also lack a forum to voice their concerns on non-proliferation and export control issues covered in the multilateral regimes to which they are not members.

Furthermore, in contrast to many other areas of the EU's external policies and as mentioned above, there is no common EU voice in multilateral regimes and other international fora where, or in the margins of which, export control issues are discussed. Currently, Member States do not coordinate their positions on the introduction of new controls before multilateral regimes meetings with the aim of defining a common EU position. Moreover, in contrast to the normal rule for the external action of the Union that concern trade in export-controlled items, it is the Member States that participate and engage in these regimes rather than the Union, notwithstanding the fact that the outcome of those regimes' discussions is subsequently incorporated in the EU dual-use legal framework.

The lack of a common EU voice exposes individual Member States to strong geopolitical pressures and with a weaker negotiating position. Against the backdrop of a geopolitical race for technology leadership and control of strategic technologies, Member States with specific technological capacities find themselves under increasing pressure from third countries. Allies or like-minded partners may seek alignment with controls designed based on their own security assessments and interests, while third countries likely to be subject to controls may threaten individual Member States with retaliation. Better EU level coordination and joint action would act as a counterweight to such pressures, give Member States the stronger negotiating hand that comes from the scale of the single market, and ensure any controls are based on a European assessment of risks and own interests.

²⁹ See footnote 15 above for further details on Articles 5, 9 and 10 of the Dual-Use Regulation.

³⁰ Currently, Cyprus, Estonia, Latvia, Lithuania, Malta, Romania, Slovenia and Slovakia are not party to the Missile Technology Control Regime; and Cyprus is not party to the Wassenaar Arrangement.

It also limits the EU's ability to operate as a geopolitical actor and engage on an equal footing with other States that also help to set the agenda for sensitive technology areas such as the US, China and Japan. This is particularly concerning at a time when the parameters for control of a range of critical emerging technologies are being defined in multilateral and plurilateral settings, or by unilateral action by the States concerned.

The emergence of a common EU voice would foster coherence of EU and Member State positions and would be complementary to the continued participation of EU Member States in the multilateral regimes.

4.4. Global supply chains and downstream impact

As set out in the European Economic Security Strategy, the COVID-19 pandemic exposed the risks that highly concentrated supply chains can pose to the functioning of the European economy. Russia's war of aggression against Ukraine showed how an overreliance on a single country, especially one with systemically divergent values, models and interests, reduces Europe's strategic options and puts our economies and citizens at risk. In this light, the EU continues to diversify its supply chains, and to increase its collective preparedness, resilience, and deterrence to non-market policies and practices and to economic coercion.

The EU is committed to work with third countries and in multilateral fora in ensuring that export controls do not unduly disrupt strategic supply chains and are consistent with the applicable exceptions of the General Agreement on Tariffs and Trade. Additionally, within the partnership strand of the Economic Security Strategy, the EU is working with countries that share such concerns to address the risks of supply chain disruptions by third countries.

4.5. The lessons learnt from EU Sanctions against Russia

The EU's response to Russia's war of aggression against Ukraine led to unprecedented and rapid expansion of sanctions against Russia. Notably, export restrictions were some of the first sanctions adopted and included the expansion of export prohibitions on dual-use and sensitive items immediately after Russian's military aggression against Ukraine in February 2022.³¹

These export restrictions have become a key tool to limit the Russian military industrial complex's access to sensitive technologies and impede their use in Russian weapons systems. To ensure the effectiveness of these export restrictions, the EU has engaged in far-reaching efforts to counter the circumvention and backfilling of sanctioned items and ensure consistent enforcement.

The implementation of EU sanctions against Russia has also led to a notable increase in the sharing of information amongst and between competent regulatory authorities, such as export control authorities and customs, and in the case of risk information, via the Customs Risk Management System (CRMS2) managed by the Commission.³² This is important to ensure effective implementation of the measures across the EU.³³

³¹ These supplemented the measures that the EU already imposed on exports of certain dual-use goods and technology in July 2014.

³² CRMS2 acts as a single point of reference for Member States to access information relevant to risk management related to the implementation of sanctions and circumventions threats.

³³ In the context of DUeS (the electronic system provided in Article 23(6) of the Dual-Use Regulation, EU Member States have shared sanction-related information related not only to denials (as it is done under the Dual-Use Regulation), but also regarding authorisations given for certain limited exports to Russia. This is further supported by the adoption of the Customs Reform proposed by the Commission in May 2023, including a new Customs Authority and Data Hub that will help deliver on an improved EU approach to risk management.

Such restrictions are comparable to dual-use export controls from a technical and procedural standpoint³⁴, although it is important to note that the EU sanctions regime and EU dual-use export control framework are separate instruments with different legal bases, objectives and decision-making rules.

Nevertheless, the export restrictions in the EU Sanctions against Russia confirmed the potential of export controls as an effective tool to address the EU's security challenges if delivered swiftly, uniformly and in coordination with international partners.

5. PROPOSED RESPONSES

As the Economic Security Strategy anticipated, the need for more rapid and coordinated action at EU level in the area of export controls has become pressing as an uncoordinated multiplication of national controls by Member States would create loopholes and undermine the effectiveness of export controls and the integrity of the Single Market. This risk is more pronounced in the current rapidly changing technology environment, where divergences between Member States would weaken the economic security of the EU as a whole.³⁵

In light of the above, the European Commission will propose action both in the short and medium-term to address the concerns. The HRVP may provide his input, where appropriate, in relation to possible issues concerning common foreign and security policy.

5.1. Ensure the continuation and the strengthening of uniform controls in the EU

In the short-term, the Commission believes that it is important to seek immediate solutions for the expansion of Annex I to the EU's Dual Use Regulation³⁶ to include those items that were not adopted by the multilateral export control regimes due to the blockage by certain members, in particular Russia, but which were supported by Member States within those regimes. This could be done by means of a targeted proposal to introduce such controls in the current EU control list set out in Annex I to the Dual-Use Regulation.

There are two routes to do so. A first route is a Commission legislative proposal under the ordinary legislative procedure, to allow an update of Annex I which would need to be jointly adopted by both the European Parliament and the Council. A potential second route is a Commission Delegated Act. The Dual-Use Regulation delegates the amendment of its Annex I to the Commission provided that the conditions for the use of delegation are met, in particular that such an amendment reflects international commitments taken by the Member States on these new items. The Commission can consider this second route if in the future Member States are in a position to confirm that they have taken on such commitments internationally.

Introducing new items for export controls under Annex I to the Dual-Use Regulation would avoid the limitations of national controls explained above in section 4.1. It would allow uniform controls throughout all 27 Member States, adopted at the same time in all EU official languages and made public. This set of single EU controls would protect the internal market and help

³⁴ For example, Annex VII part A of Regulation 833/2014 ("Russia Sanctions Regulation"), which lists items subject to export restrictions to Russia, follows a similar structure as Annex I of the Dual-Use Regulation. In addition, Art 2(6) of the Russia Sanctions Regulation stipulates that the rules and procedures of the Dual-Use Regulation are applicable mutatis mutandis to these export restrictions.

³⁵ Joint Communication to the European Parliament, the European Council and the Council on "European Economic Security Strategy" (JOIN/2023/20 final).

³⁶ By contrast to national controls by Member States, items included in Annex I of the Dual-Use Regulation are uniformly and simultaneously controlled by all Member States in application of Article 3 of the Dual-Use Regulation.

level the playing field among EU exporters. It would also increase the effectiveness of EU controls and the efficiency of controls across Member States, for example by making a more efficient use of legislative and regulatory resources in the Member States.

5.2. Set up a forum for political coordination on export controls

In light of the increasing geopolitical pressures described above, Member States and the Commission should have a forum to discuss developments at the appropriate senior level to foster common EU positions, take account of the single market dimension of export control developments, and prepare and coordinate action at international level. This could take the form of an export control policy forum.

5.3. Mechanism for better coordination of new National Control Lists

Also in the short-term, the Commission considers it crucial to improve the coordination of new National Control Lists introduced by EU Member States. This responds to situations where Member States may decide to adopt national control lists with respect to items that they consider to be at risk but which are not yet controlled at the multilateral level.

Before the end of its term, the Commission intends as a first step to adopt a Recommendation proposing to enhance such coordination. The measure would recommend that Member States notify to other Member States and to the Commission any new National Control List prior to adoption; and that other Member States have the possibility to comment on the envisaged National Control List, where they consider that the list is likely to affect their public security and to provide the Member State proposing such controls with relevant information. The Commission would also be ready to make comments or adopt opinions in situations where it considers that the new National Control List are likely to affect the public security of more than one Member State or the Union's interest.³⁷

This voluntary approach to enhance coordination would have the potential to increase transparency surrounding the adoption of new National Control Lists by Member States; facilitate the coordination of controls among Member States under Articles 9 and 10 of the Dual Use Regulation; and allow competent national authorities to take into account potential risks or impacts of their decisions for other Member States and for the Union.

5.4. Bring forward the timing of the evaluation of the Dual-use Regulation.

The Dual-Use Regulation foresees its evaluation between 2026 and 2028. However, the rapid pace of events in last three years leads the Commission to conclude that the evaluation should be advanced to the first quarter of 2025 to assess and subsequently potentially make proposals to remedy shortcomings in its effectiveness and efficiency – some of which have been highlighted in this White Paper.

³⁷ The Union interest would consider all available information and consist of an appreciation of the various interests at stake taken as a whole. This would include the interests of Union economic operators such as upstream and downstream industries as well as projects or programmes of Union interest within the meaning of the Regulation (EU) 2019/452.

This evaluation will be supported by a comprehensive study in 2024 but will also be able to draw on the results of the evaluation of a number of technologies critical for the EU's economic security, as announced in a Commission Recommendation³⁸ adopted on 3 October.³⁹

This evaluation will be done in consultation with Member States and stakeholders and will be accompanied by a public consultation. This should enable stakeholders to identify shortcomings to the effectiveness and efficiency of the current framework and propose possible solutions to these in view of the challenges identified in this White Paper.

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³⁸ Commission Recommendation of 3 October 2023 on critical technology areas for the EU's economic security for further risk assessment with Member States (C(2023) 6689).

³⁹ This is in line with the Member States ambition to better control the export of technologies. See for example the statements of Secretary of State for European Affairs of France Laurence Boone on the need for the EU to complete its doctrine on which technologies it is willing to export and to where at the Peterson Institute on 28 March 2023, available at <https://www.piie.com/events/european-approach-economic-statecraft>.