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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT
Report on the EU Export Control Policy Review Accompanying the
document Proposal for a Regulation of the European Parliament and of the
Council setting up a Union regime for the control of exports, transfer,
brokering, technical assistance and transit of dual-use items (recast)

Delegations will find attached document SWD(2016) 314 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Report on the EU Export Control Policy Review

Accompanying the document

Proposal for a

Regulation of the European Parliament and of the Council setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast)

{COM(2016) 616 final}
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Executive Summary Sheet

Impact assessment on EU Export Control Policy Review

A. Need for action

Why? What is the problem being addressed?

The current EU export control system is not fully adapted to keep up with today's evolving and new security risks, rapid technological and scientific developments as well as transformations in trade and economic processes. Moreover, the current system does not clearly take into consideration the emerging trade in cyber-surveillance technology and the risks it creates for international security and human rights. From an economic perspective, the system imposes heavy administrative burden on industry and authorities alike, and sometimes lacks legal clarity. What is more, divergences in interpretation and application among Member States result in asymmetrical implementation and create competitive distortions within the Single Market. The problem affects a variety of economic operators across numerous industries, including SMEs, while the security and human rights aspects are relevant for specific categories such as dissidents or activists in third countries, as well as the EU population as a whole.

What is this initiative expected to achieve?

The EU export control policy review aims at supporting the overall policy objectives of the Union, as stipulated in Art. 3 TEU, i.e. "contribute to peace and security, as well as free and fair trade and the protection of human rights". The specific policy objectives are: adjusting to evolving security risks and threats; adapting to rapid technological and scientific developments; preventing the export of cyber-surveillance technology in violation of human rights; reducing competitive distortions and administrative costs within the Single Market; levelling the global playing field; and ensuring the effective and consistent application of controls in the EU.

What is the value added of action at the EU level?

Dual-use export controls form part of the Common Commercial Policy. The EU therefore has the right to act, based on exclusive competence under Article 207 of TFEU. The objectives can only be achieved through EU action ensuring that competent authorities act in close collaboration and apply controls in a consistent way. EU intervention is also necessary to iron out competitive distortions within the Single Market, and promote dialogue with key trade partners to level the global playing field. EU action is furthermore needed to protect fundamental rights enshrined in the Charter of Fundamental rights. The identified review options comply with the principles of proportionality in that they are limited to what is necessary to achieve the objectives.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

In light of the initiatives envisaged in the Commission Communication (2014)244, five options have been identified which range from a baseline scenario (no policy change) to a complete overhaul and full harmonisation of the export control system.

A thorough analysis was conducted to assess the impact of the different review options. Options 2 (Implementation and Enforcement Support), 3 (EU System Upgrade) and 4 (EU System Modernisation) were compared to Option 1 – the baseline. The assessment was based on Commission services' own analysis and practical experience, on data and contributions provided by Member States, on the findings of an external data collection study, and on the results of stakeholder consultations. A fifth option (EU System Overhaul), which would radically change the EU approach to export controls, faced strong opposition from Member States and stakeholders and was therefore not further assessed.

Option 3 appears as the most efficient and effective option in light of economic and security impact criteria. However, option 4 appears indispensable to achieve the objective to prevent human rights violation caused by the lack of appropriate controls of cyber-surveillance technology. Hence a combination of options 3 and 4 are the 'preferred option'.

Who supports which option?

Member States, the European Parliament, industry and civil society have recognised the need for a modernisation of the export control system as, broadly, presented in options 2 and 3, though their position may vary on specific issues.

The European Parliament and civil society have advocated for strong EU action to control the export of cyber-surveillance technology (Option 4). The Commission and the Council have recognised the need for EU action in this respect.

C. Impacts of the preferred option
<p>What are the benefits of the preferred option (if any, otherwise main ones)?</p> <p>Since there are no official statistics on dual-use production and trade and relevant quantitative data essentially concerns value and volume of licensing, an assessment of impacts relating to specific actions was based largely on qualitative analysis.</p> <p>Option 3 focuses on the modernisation of existing regulatory provisions. It contributes to most specific objectives and is most apt to achieve significant progress on the general objectives except for the one related to the protection of human rights. It would result in a reduction of the administrative burden for exporters and authorities, while enhancing the clarity of key legal provisions. It would also increase the effectiveness and EU-wide consistency of controls and thus enhance security, and promote a better level playing field with competitors globally.</p> <p>Option 4 would respond to the proliferation of cyber-surveillance technologies whose misuse poses a risk to international security and human rights. It would provide for robust and flexible control mechanisms of these technologies and can be expected to have a significantly positive impact on security and human rights.</p>
<p>What are the costs of the preferred option (if any, otherwise main ones)?</p> <p>Option 3 would entail some additional transitional administrative costs for Member States authorities in the short run, which will, however, be recovered through efficiency gains and reduction of administrative costs once new provisions are put in practice. For operators, option 3 should result in reduction of administrative costs.</p> <p>Option 4 could result in a higher administrative burden for operators and authorities, both at national and EU level, since a new layer of control would be added. It could also give rise to new distortions of competition at global level, as it cannot be ensured that other key technology suppliers (e.g. China, US) would introduce similar controls. However, to the extent that Option 4 would focus on very specific technologies, negative economic impact would be limited to a specialised industry with a small trade volume.</p>
<p>How will businesses, SMEs and micro-enterprises be affected?</p> <p>Dual-use export controls concern a variety of firms across different sectors, including exporters and manufacturers, inter alia, in the energy, aerospace, defence and security, transport and navigation, telecommunications, chemical, electronics, semiconductor and computing industries. A number of SMEs are active in the sector. As an illustration, in the defence industry (that also produces dual-use items), in 2012, firms with less than 10 employees represented 76.7% of the total number of firms.</p> <p>The majority of respondents to the public consultation agree that the export control policy review would "likely facilitate dual-use exports by SMEs. Importantly, industry stakeholders will be affected by changes to export controls only to the extent that they apply to the type of dual-use items they trade.</p>
<p>Will there be significant impacts on national budgets and administrations?</p> <p>Option 3 is expected to result in a reduction of administrative burden for Member States licensing authorities. On the other hand, the introduction of new export controls on cyber-surveillance technology under Option 4 will require administrative resources from competent authorities of Member States.</p>
<p>Will there be other significant impacts?</p> <p>Positive impact is expected in terms of prevention of human rights abuses, reduction of distortion of competition within the Single Market, levelling the global playing field and security.</p>
D. Follow up
<p>When will the policy be reviewed?</p> <p>Monitoring of implementation will be carried out in cooperation with Member States. Annual reporting and data collection will provide a basis for monitoring and evaluation of the implementation, and to inform the Parliament and Council.</p> <p>The Commission will undertake an evaluation of this new initiative within five years of its entry into force in order to assess the actual impact and evaluate its efficiency and effectiveness.</p>