Consultation on the Export Control Policy Review (Regulation (EC) No 428/2009)

Fields marked with * are mandatory.

The purpose of this consultation is to collect relevant evidence and information from stakeholders to help the Commission develop its strategy in this area. This document does not necessarily reflect the views of the European Commission and should not be interpreted as a commitment by the Commission to any official initiative in this area.

Period of consultation

15.07.2015 to 15.10.2015.

Transparency and confidentiality

To ensure that our public consultation is open and transparent, the report of the consultation will be published on the European Commission's website.

In addition, the contributions and the identification data (name) of the respondents will also be published, unless a respondent has specifically requested not to have their identification data (name) published by ticking the appropriate box below.

*Please indicate your preference:

◉ I agree to the publication of my identification data (name) alongside my contribution

○ I do not agree to the publication of my identification data (name) alongside my contribution

1. Introduction

The European Commission is launching a public consultation on the "Export Control Policy Review". The aim of the consultation is to get interested parties' views on objectives and review options, as outlined in Communication (2014)244, and their likely impact. The Commission will utilise the results of the consultation to help it identify the most suitable regulatory and non-regulatory actions to put into effect and decide whether – and how in a sensible, effective and efficient manner – to propose amendments to Regulation (EC) N° 428/2009.

2. The export control policy process, impact assessment and public consultation.

As required by Art. 25 of Regulation (EC) No 428/2009 (hereunder "the Regulation"), and as a first step toward preparing the review, the Commission issued a Green Paper[1] aimed at launching a broad public debate concerning the EU export control system and, in January 2013, published a Staff Working Document[2] identifying the main issues raised by over 100 stakeholders, including their views concerning possible evolutions towards a more integrated EU export control regime ensuring security and a more level-playing field. A report to the European Parliament and Council on the implementation of the Regulation was adopted on 16 October 2013[3], providing information about legislative developments, application of controls, and control data, and marking a second step in the review process.

The report opened the way to the adoption, in April 2014, of a Commission Communication[4] ("the Communication") outlining a long-term vision for EU strategic export controls and identifying concrete policy options for the modernisation of the export control system and its adaptation to rapidly changing technological, economic and political circumstances. The Commission then initiated an impact assessment process to assess the costs and benefits associated with review options, and is now conducting a public consultation to support that impact assessment.

3. Rationale: the need to upgrade EU export control policy

The analysis and stakeholder consultations carried out until now within the export control policy review have thus far demonstrated that, though the EU export control system provides solid legal and institutional foundations, it cannot remain static. The review illustrated the need to address various challenges, weaknesses and deficiencies of the current system identified by stakeholders. Moreover, it pointed towards the necessity to respond to evolving security, economic and technological conditions and concluded that the EU system should be upgraded in order to face those challenges and generate the modern control capabilities the EU needs in the coming decade and beyond. The review has emphasised the key importance of striking the right balance between trade and security, in order to enhance the contribution of strategic export controls to international security, and promote a more level playing field for EU industries and help them compete on equal terms in a global market.

The Communication has outlined options for an upgraded and more integrated EU export control system that ensures robust and consistent implementation of controls, while also minimising distortions of competition associated with controls and the application of the Regulation within the EU.

The ongoing impact assessment and the present public consultation are intended to identify the most suitable options for upgrading the EU Export control system in line with the objectives identified in the Communication. The public consultation will help the Commission to select the review options with the biggest potential positive effects in terms of security and/or competitiveness, providing a solid basis for the preparation of a proposal for upgraded export control regulations.

4. Subsidiarity

In order to address the issues identified by stakeholders and review EU export control policy, action at EU level is indispensable, as dual-use export controls are a trade instrument in an area of exclusive EU competence in the framework of the Common Commercial Policy.

Moreover, EU action is justified as Member States cannot achieve sufficiently the objectives of the proposed action by themselves, in particular as distortions within the Single Market often derive from divergent application of controls. Moreover, promotion of a global level playing field is better pursued at EU level and by supporting the development of controls by key trading partners' rules in light of EU regulations (e.g. adoption of similar lists of dual-use items).

5.Practical information

The consultation is managed by the Commission's Directorate-General for Trade.

 The European Commission asks to receive your reply to this questionnaire by **15 October 2015**.

[1] COM(2011) 393 of 30 June 2011.

[2] SWD(2013)7 of 17 January 2013.

[3] COM(2013) 710 of 16 October 2013.

[4] COM(2014) 244 final of 24 April 2014.

Relevant documents and webpage:
Regulation 428/2009
Communication
Questionnaire in pdf
Specific Private Statement
Consultation webpage

QUESTIONS FOR STAKEHOLDERS

A. Identification of the respondents

* 1. Name

Joe McNamee

* 2. Organisation

European Digital Rights (EDRi)

* 3. Email address

joe.mcnamee@edri.org

* 4. In which country is your organisation located? (If more than one, choose the country where your headquarters are located)

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Belgium
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* 5. Who are you / Who do you represent?

- ○ a) Administration
- ○ b) Industry association
- ○ c) Dual-use exporter / manufacturer
- ○ d)Broker
- ○ e) Transit/transport company
- ● f) Civil society organisation, academia, research institute
- ○ g) Other

* 6. To which sector does your organisation belong?

- ○ a) Energy, incl. nuclear
- ○ b) Industrial goods, incl. machinery and equipment
- ○ c) Space / Aeronautics
- ○ d) Computer / Electronics
- ○ e) Telecomunications
- ○ f) Chemicals
- ○ g) Bio / pharmaceuticals
- ● h) Other[1]

[1] Please use, where possible, the Statistical classification of economic activities in the European Community (NACE) – see http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Statistical_classification_of_ecor

* 7. Is your organisation a:

- ○ a) Large enterprise (>=250 employees)
- ○ b) Medium-size enterprise (50-249 employees)
- ○ c) Small (10-49 employees)
- ● d) Micro (1-9 employees)
- ○ e) Other …

[1] For references to Export Control Classification Numbers, please see Annex I to Regulation (EC) No 428/2009.

8. If applicable, which dual-use items do you export? Please list the top 3 items (Export Control Classification Number [1]):

[1] For references to Export Control Classification Numbers, please see Annex I to Regulation (EC) No 428/2009.

Please provide any additional information regarding the category of dual-use items exported.

B. Baseline scenario, objectives and review options.

In light of the stakeholders consultation initiated by the Green Paper and of the subsequent analysis, the Communication has identified the need for a review of EU export control policy and presented possible review options[1] with the objective to enhance the contribution of export controls to international security (including the protection of human rights) and to promote a more level-playing field for EU industries and help them compete on equal terms on global markets.

[1] Please refer to the Communication for the presentation of review options.

Question 1: Do you have any comments on the objectives of the review?

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It is clearly desirable to restrict the export of tools that enable
mass-surveillance and other violations of human rights to regimes that
would use them in that capacity. However this must be handled with care,
so as to minimize the collateral effect on the human rights of
individuals both within those states, and universally. For instance, the
regulations should not block the legitimate sharing of vulnerability
information between security researchers, information security
companies, and vendors in a position to patch the vulnerabilities or any
other benevolent actors. Simply controlling the export of vulnerability
information from the EU would be extremely damaging, as European firms
citizens or corporations who discover vulnerabilities typically have to
report them to foreign vendors to get them fixed.
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Question 2: Do you agree that a review of export control policy, as outlined in the Communication, would likely enhance the EU's capacity to achieve those objectives, as compared to the continuation of current EU system for dual-use export control (status quo)?

⦿ Yes
◯ No
◯ No opinion

Question 3: Would you agree that a review of export control policy, as outlined in the Communication, would likely have the following impact?

	Strongly agree	Agree	Disagree	Strongly disagree	No opinion
Enhance the EU's capacity to address evolving security risks such as WMD[1] proliferation and terrorism? [1] Weapons of Mass Destruction (WMD)	◯	⦿	◯	◯	◯
Support the prevention of human rights violations in third countries?	◯	⦿	◯	◯	◯
Enhance the EU's capacity to respond to rapid scientific and technoligical developments?	◯	◯	◯	◯	⦿
Enhance competitiveness of EU companies?	◯	◯	◯	◯	⦿
Facilitate dual-use exports by SMEs?	◯	◯	◯	◯	⦿
Enhance the efficiency of export control administration?	◯	◯	◯	◯	⦿
Bring indirect positive social benefits e.g. in terms of job creation in dual-use industries?	◯	◯	◯	◯	⦿
Bring indirect environmental benefits e.g. by facilitating trade in efficient technologies?	◯	◯	◯	◯	⦿

C. Impact of Review Options

Human security approach. The Communication recognises that security and human rights are inextricably interlinked and that the proliferation of new technologies – in particular cyber-surveillance technology – increasingly poses a risk for human rights and for the security of the EU and its citizens. It suggests developing a wider "human security approach", addressing not only risks associated with possible military and WMD proliferation, but also defending fundamental rights and digital freedoms in a globally connected world.

Question 4: Would you agree that the adoption of a "human security approach" would allow EU export control policy to:

	Yes	Partly	No
a) Move beyond the artificial divide between external / internal security?	○	●	○
b) Better take into consideration the security of EU and its citizens?	○	●	○
c) Better address the risk that EU exports of cyber-surveillance technology could be misused in violation of human right?	○	●	○

Please provide any additional comment in this respect;

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The human security approach can only work if a) the technologies that
are to be regulated are well-defined and b) such approach acknowledges
and balances that regulation in itself can become a human rights
violation, for example by restricting the rights to impart and recieve
information or by restricting free speach.
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As outlined in the Communication, the human security approach could imply a combination of actions affecting in particular control criteria (inclusion of human rights as an explicit control criterion), control lists and/or control parameters.

Question 5: Would you agree that the inclusion of human rights as a control criterion in the EU export control regulation would allow the EU to prevent more effectively exports of cyber-surveillance technology that might be abused in violation of human rights?

○ Yes
● Partly
○ No

Please provide any additional comment in this respect.

Question 6: Would you agree that it would be appropriate to review the definition of "dual-use item" with a view to moving beyond the traditional WMD and military focus of the export control regulation and to addressing additional risks, such as the risk of human rights violations and the proliferation of new types of technologies, such as cyber-surveillance technologies?

- ◉ Yes
- ◉ Partly
- ◉ No

Question 7: Would you agree that the actions to pursue the "human security approach" will likely have the following impact? (Please tick the box when the actions could, according to your opinion, have the listed impact).

	Mandatory criteria for human rights control	Due diligence and self-regulation by industry	Multilaterally-agreed list-based control	EU autonomous list-based controls	Catch-all control
More level-playing field across the EU	◉	○	○	○	○
Increased security	◉	○	○	○	○
Increased competitiveness of the EU industry	◉	○	○	○	○

Question 8: Do you see any other means to pursue the human security approach? Please specify.

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An important means to pursue the human security approach in the context
of controlling the export of technology that has surveillance uses is
that of restricting the exports of services related to them. These
technologies are typically available online for free anyway; what human
rights violating regimes typically lack is the expertise to make them
work. These services are often provided in the form of in-the-field
consultancy and/or support contracts, regulation of which is less likely
to become counterproductive for IT security research and freedom of
speech in general.
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"Smart security" mechanism. The Communication recognises the need to adapt to the transformations of dual-use items and the proliferation of new technologies – such as additive manufacturing, Unmanned Aerial Vehicles (aka "drones"), cloud computing etc. - and address the increasing complexity of the international supply chain. It proposes to develop a "smart security" mechanism, mobilising the expertise available within export control authorities and through structured engagement with industry, in order to allow the EU to respond to rapid technological and scientific development that pose new threats to the security of governments, commercial enterprises and the individuals. This mechanism could also aim at ensuring that technologies which have become obsolete or widely available commercially are removed from the control lists and would enable the EU to discuss technology with partners and promote global convergence.

Question 9: Would you agree that the development of a mechanism for voluntary technical consultations on dual-use technologies could be positive for:

	Yes	Partly	No
a) Ensuring that control lists are commercially and technologically up to date?	○	◉	○
b) Controlling effectively emerging technologies of concern?	○	○	◉
c) Promoting global convergence, through multilateral export control regimes and bilateral dialogues with partners	○	◉	○

Question 10: Would you agree that the preparation of yearly updates to the EU control list promotes a global-level playing field?

◉ Yes
○ Partly
○ No

Question 11: Would you support regular consultations with industry and the development of guidelines on the control of specific dual-use items as part of the "smart security" mechanism?

◉ Yes
● Partly
◉ No

Question 12: Would you support structured EU coordination on the control of specific technology and the presentation of EU positions in multilateral export control regimes as part of the "smart security" mechanism?

◉ Yes
● Partly
◉ No

Please provide any additional comment in this respect.

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It is very difficult to respond to the so-called "smart security"
mechanism since the communication document is rather vague on both the
mechanism itself and what would make it "smart" and/or how it would
contribute to "security". While EDRi does appreciate the Commission's
willingness to acknowledge that there is a high likelihood of it not
getting export regulations right on the first or subsequent attempts, it
would make for a very unpredictable environment for businesses, NGOs and
academic researchers alike. First, consultations must include NGOs,
academics and civil society generally, not just industry. Secondly, any
such mechanism, "smart" or not, should therefore include the right to
challenge the Commission's changes through judicial review, including
the right to challenge these for the purpose of preserving human rights.
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Modernisation of trade controls. The Communication emphasises the porosity of legal and illicit trade and suggests options for strengthening the legal basis and upgrading certain control modalities in light of past experience and in order to cover all aspects and actors in the chain of controls, as well as addresings divergent applications of controls and related vulnerabilities. This could include clarifications and improvements of key concepts and definitions in the export control regulation such as for example:

- the *definition of exporter* to clarify that it may also cover other actors involved in supply chain such as shipping agencies, fast parcel services, providers of financial services, researchers etc.
- the *determination of the competent authority*, e.g. for non-EU companies, as well as for natural persons.
- the *jurisdiction clause* to control transactions between third countries involving EU persons (e.g. brokering by an EU person from a third country to a third country).
- the scope of *brokering*, technical assistance and transit controls and their harmonisation throughout the EU.

Question 13: Would you agree that the review of such specific legal provisions could be positive for:

	Yes	Partly	No
a) Legal clarity?	○	●	○
b) The level-playing field?	○	○	●
c) The effectiveness of controls?	○	○	●

Strategy for "immaterial control". The Communication identifies the challenge posed by Intangible Transfers of Technology (ITT), including 'dual-use research', and recognises the need to avoid undue obstacles to the free flow of knowledge and the global competitiveness of EU science and technology. It suggests a "strategy" for moving beyond the current focus on tangible (goods) transactions towards electronic movement of data that can be used to modify and produce unlimited quantities of sensitive items and sets out options to enhance the control of Intangible Transfers of Technology, including Dual-Use Research of Concern.

Question 14: Would you consider that the proposed "strategy for immaterial control" of "digital trade" and technology transfers, including dual-use research, could:

	Yes	Partly	No
a) Reduce distortions of competition and ensure a more level-playing field?	○	○	●
b) Increase the effectiveness of controls to prevent the proliferation of dangerous technologies of concern?	○	○	●
c) Infringe on scientific freedom and risk constraining innovation?	●	○	○

Question 15: Would you support the introduction of simplified control mechanism – such as EU General Export Authorisation or global licence - for the control of intra-company technology transfers?

○ Yes
○ Partly
● No

Please provide any additional comment in this respect.

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Allowing intra-company transfers will simply create an enormous loophole
to be exploited not just by large abusers such as the defence majors but
also by one-man arms dealers who commonly set up shell companies in
multiple jurisdictions.
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Question 16: Would you agree that outreach to industry and academia, including the development of public guidance for technology transfers and dual-use research, could enhance enforcement of controls while ensuring academic freedom is preserved?

○ Yes
○ Partly
● No

Please provide any additional comment in this respect.

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The existing dual-use regime already in theory applies to many
researchers in science and technology who are simply unaware of its
existence. Many software writers use cryptography without being aware of
the supposed need to register to use the various open licences. Many
users of advanced scientific equipment are similarly unaware that they
should actually do some paperwork when they write scripts to control
this equipment and share them with colleagues outside the EU. A lot of
research and development actually takes place outside large traditional
academic projects, even when it results in peer-reviewed academic
publications and/or lectures at conferences with academic standing. Many
ad-hoc collaborations are set up by people who run into each other at
scientific meetings or even strike up email conversations without ever
meeting in person. Any regime that fails to acknowledge that academic
research in this field is not confined to academia is bound to fail.
Moreover, the practitioners in this field tend to be highly mobile,
spending a lot of time outside the EU.
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Optimisation of the licensing architecture. The Communication notes that controls are sometimes associated by economic operators with burdensome licensing procedures. Moreover, it recognises that, with over 40 000 applications per year, export controls are demanding in terms of administrative resources for control authorities. It therefore suggests to optimise the licensing architecture and shift towards "open licensing" in order to minimise delays and distortions of competition, for instance by introducing additional EU General Export Authorisations (EUGEA) – e.g. on encryption, intra-EU transfers, intra-company technology transfers, Low Value Shipments, large projects.

Question 17: Would you agree that further EU harmonisation of export authorisations could:

	Yes	Partly	No
a) Minimise distortions of competition associated with divergent licensing practices within the Single Market?	◉	○	○
b) Reduce export control management costs, in particular for SMEs?	◉	○	○
c) Enhance the effectiveness of controls by shifting from "paper-based" ex-ante controls on transactions to pre- and post-transactions controls on companies?	○	◉	○

Question 18: Would you agree that granting the European Commission the competence to modify, in consultation with experts from Member States, the list of EUGEAs and their content could help ensure that EUGEAs could be updated, or new types of EUGEAs could be introduced, in a timely and efficient manner?

◉ Yes
○ Partly
○ No

Question 19: Would you support the introduction of any of the following EUGEA:

	Yes	Partly	No
1) Low Value shipments	◉	○	○
2) Encryption	○	◉	○
3) Intra-EU transfers (items listed in Annex IV of the Regulation)	◉	○	○
4) Intra-company technology transfers	◉	○	○
5) Large projects (e.g. construction of a nuclear power plant)	○	◉	○
6) Specific dual-use items (e.g. frequency changers)	◉	○	○

Please provide any additional comment in this respect, including, for any EUGEA that you would support, regarding the type of items and the destinations to be covered.

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IT security tools (debuggers, forensic tools etc.) should enjoy a
general exemption, as should intangibles relating to scientific
equipment (such as scripts used to control the behaviour of a focussed
ion beam workstation).
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Question 20: Would you agree that a regular review of National General Authorisations, in view of their possible transformation into EUGEAs, would reduce distortions of competition within the EU?

- ⦿ Yes
- ○ Partly
- ○ No

Question 21: Would you agree that the harmonisation of the "conditions and requirements for use" for EUGEAs could reduce distortions of competition within the EU?

- ⦿ Yes
- ○ Partly
- ○ No

Convergence of "catch-all controls"[1]. The Communication recognises that "catch-all controls" remain essential tools to prevent the use of non-listed items for proliferation, but acknowledges that uneven implementation has raised concerns in terms of legal clarity, distortions of competition and potential weak links in the chain of controls. It sets out options for greater convergence of catch all controls through harmonisation of the notion of catch-all controls, the establishment of an EU catch-all database and the strengthening of consultation mechanisms to ensure their EU-wide application.

[1] Catch-all controls apply to dual-use items which are not listed, but for which export there exist e.g. a WMD proliferation risk.

Question 22: Would you agree that actions to promote a greater convergence of catch-all controls could:

	Yes	Partly	No
a) Enhance legal clarity and predictability, thus reducing compliance costs and enhancing the competitiveness of EU companies?	●	○	○
b) Minimise distortions of competition associated with divergent application of controls within the Single Market?	●	○	○
c) Enhance the effectiveness of controls by ensuring that relevant information is available to stakeholders throughout the EU?	○	○	●

Please provide any additional comment in this respect.

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Catch-all controls for anything related to software products are highly
problematic as the effects of any regulation are highly unpredictable.
The regulations will have to be drawn with regard to both the stated and
the actual effects of any products to  be regulated whose behaviour is
highly dependent on software that can be changed subsequently, for
example.
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Question 23: Would you agree that the harmonisation of the definition and scope of catch-all controls (e.g. regarding destinations, end-users and items covered by the catch-all control) could help reduce divergent application across the EU?

● Yes
○ Partly
○ No

Question 24: Would you agree that the introduction of a mandatory consultation process could support uniform EU-wide application of catch-all controls and reduce distortions of competition associated with divergent control requirements?

○ Yes
● Partly
○ No

Question 25: Would you agree that enhanced information exchange and transparency – incl. the possibility of publication of catch all requirements – would improve, respectively, the efficiency of catch-all controls for authorities and the legal clarity for private operators?

- ○ Yes
- ● Partly
- ○ No

Critical re-evaluation of intra-EU transfer controls. The Communication identifies a need to minimise remaining barriers within the Single Market, while acknowledging that there may be a need for keeping some form of control on the most sensitive dual-use items even within the EU Single Market. It outlines options for a critical re-evaluation of intra-EU transfer controls, such as an updated list of the most sensitive items (Annex IV of Regulation (EC) No 428/2009) and/or the introduction of an EUGEA for intra-EU transfers, including technology transfers.

Question 26: Would you agree that updating the list of items in Annex IV to the export control regulation could help bringing controls in line with technological developments and commercial availability?

- ○ Yes
- ○ Partly
- ○ No

Question 27: Would you agree that actions to review intra-EU transfer controls – review of the list of most sensitive items in Annex IV and/ or EUGEA associated with new possibilities for controls e.g. post-shipment verification - could:

	Yes	Partly	No
a) Reduce compliance costs and enhance the competitiveness of EU companies?	○	○	○
b) Ensure the effectiveness of controls for most sensitive items through risk-based controls?	○	○	○

Please provide any additional comment in this respect.

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Many products depend on continuous update and support. For example, mass
surveillance tools used for population monitoring and censorship often
depend on the vendor supplying updated whitelists, blacklists and
technical filters to keep the product working in the context of an ever
evoling Internet. Thus in the case of an EU firm that exports a mass
surveillance product to Dubai, where a middleman then re-exports it to
Syria, the original exporter is technically in a position to observe the
re-export and to render it unserviceable by means of the update
mechanism. The most sensitive products, such as mass surveillance
systems, should be subject to a duty of continuous monitoring. This
should happen even in the case of intra-EU exports, so that
mass-surveillance products cannot be illictly exported from the UK or
Germany via middlemen in Greece or Malta or Croatia.
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Development of an EU export control network. The Communication sets out options to develop a more integrated EU export control network in order to ensure consistent implementation and enforcement and address the risk of evasion of control processes, but notes that a lack of solid EU-wide statistics and intelligence still hampers effective policy and operational responses. It suggests developing structured exchanges of information between export control authorities, operational cooperation with enforcement agencies, enhanced synergies between security-related trade control instruments as well as capacity-building (training) and export control outreach.

Question 28: Would you agree that the development of an EU export control network could be positive for:

	Yes	Partly	No
a) Reducing the fragmentation of the EU control system and promoting a level-playing field within the Single Market?	◉	○	○
b) Enhancing the effectiveness of controls and address risks of "licence shopping" and trade distortions and potential "weak links"?	○	○	◉

Question 29: Would you agree that the development of a common IT infrastructure to support the EU export control network – including e.g. the introduction of electronic licencing for all competent authorities - could usefully contribute to consistent and efficient implementation of controls within the EU?

◉ Yes
○ Partly
○ No

Question 30: Would you agree that enhanced synergies between various EU export control instruments – for controlling exports of dual-use items, "torture" items, arms/defence items etc – could enhance the consistency of EU controls on sensitive trade?

- ◉ Yes
- ○ Partly
- ○ No

Question 31: Would you agree that introduction of EU-wide capacity-building and training, for officials from licensing and other relevant administrations, and including outreach to industry and academia, could usefully contribute to consistent and efficient implementation of controls within the EU?

- ○ Yes
- ◉ Partly
- ○ No

Private sector partnership. The Communication stresses that the private sector plays a crucial role in the control chain, as operators are well-placed to spot illicit trade and protect sensitive technology, while uneven trade compliance creates trade distortions and risks for the exploitation of weak points in supply chains. It proposes to develop a "partnership" with the private sector to enhance the security and resilience of the global supply chain, through better coordination between governments and the private sector, introduction of EU-wide standards for company compliance (e.g. Internal compliance programmes (ICP), due diligence, reporting of suspicious transactions …), combined with greater transparency and outreach to the private sector and academia (including the development of guidance and other support tools such as electronic licensing systems).

Question 32: Would you agree that the development of a "private sector partnership", as outlined in the Communication, could be positive for:

	Yes	Partly	No
a) Promoting the level-playing field within the Single Market?	○	○	◉
b) Promoting the global convergence of controls?	○	○	◉
c) Enhancing the effectiveness of controls?	○	○	◉

Question 33: Specifically, would you consider that the following options for introducing industry compliance standards, would enhance the level-playing field while containing compliance costs and administrative burden:

	Yes	No
a) Supply chain due diligence for dual-use exporters, incl. suspicious transactions reporting?	●	○
b) Standard ICP requirement for global licence holders?	○	●
c) Standard ICP requirement for all dual-use exports?	○	●

Question 34: Would you agree that the development of a "private sector partnership", through standard compliance requirements containing compliance costs, could support SMEs' capacity to export dual-use items?

○ Yes
○ Partly
● No

Please provide any additional comment in respect of the "private sector partnership".

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How export controls work in practice is that they favour the large arms
exports who have a 'revolving door' whereby arms executives spend time
on secondment at export control organisations, and export officials get
post-retirement jobs at arms companies. This cosy arrangement enables
much of the purpose of arms export controls to be circumvented by the
largest exports but is simply not open to SMEs. The disadvantage
suffered by SMEs would be mitigated by a uniform centralised bureaucracy
that treats all applications alike, without fear or favour, and that
imposes strict liability rather than offering 'compliance' exemptions.
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Question 35: Would you consider that an enhanced partnership with the private sector should be accompanied by increased transparency and support tools – e.g. in the form of guidelines, risk assessment notices etc – as well as structured outreach in order to provide the private sector with the information necessary to implement controls effectively?

○ Yes
○ Partly
● No

Global convergence. The Communication stresses the need to reinvigorate EU action to promote the global convergence of export controls in order to reduce the legal uncertainty and costs associated with divergent levels of controls, and to minimise the risk that proliferators might exploit "weak links" in the chain of controls, and sets out possible actions for promoting a more level-playing field.

Question 35: Would you agree that regular exchanges of information regarding export control best practice and regulatory convergence with key trading partners could promote a more-level-playing field?

○ Yes
○ Partly
◉ No

Question 36: would you agree that the introduction of "end-use monitoring" (i.e. verification of the end-use directly at the premises of the end-use, in a third country) could usefully complement the shift towards open monitoring and facilitate exports to certain "trusted partners" on third markets?

◉ Yes
○ Partly
○ No

Question 37: Would you agree that EU participation in all multilateral export control regimes would appropriately reflect the EU's role as a key security and trade actor, and would allow the EU to better promote its interests and represent its export control system?

◉ Yes
○ Partly
○ No

Question 38: Would you agree that EU outreach to third countries helps raise awareness about controls and disseminate EU best practice, and thus contributes to a more level-playing field?

○ Yes
○ Partly
◉ No

Contact

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