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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
Subject:	Outcome of proceedings of the Working Party on Dual Use Goods of 14 March 2023

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (06.06.2023)

1. The revision of the Dual Use Working Group Mandate

The Chair of DUWP reported on the progress concerning the revision of the Dual Use WP mandate. She thanked all the TF members for the excellent contributions and engagement. A second round of consultations took place on 6 March, with TF members discussing further amendments to the draft. The revised version of the draft mandate has been circulated to the TF members for a written consultation before its finalisation and transmission to the DUWP for consideration.

The Chair explained that the mandate is designed to be future proof, giving clear guidance for the work of the DUWP. There is a common understanding amongst TF members that the core work of the WP is the Dual Use Regulation, including policy making, legislation, information exchange etc., entailing also work on emerging/advanced technologies as reflected in the Regulation (cf. Art. 2.1) and by current work carried out by technical experts in this respect, including DUCG and ETEG. The additional mention of “subsequent recasts” will help to indicate the evolving nature of the core work of the WP. Linkages to multilateral regimes will be reflected in the mandate providing the DUWP a platform for discussions, without providing for a too open-ended wording.

The intergovernmental aspects of the regimes as well as issues of confidentiality and membership will be taken into account.

The mandate would acknowledge the added value that the technical expertise of the WP, its delegates and EUMS technical experts may provide in relation to work on restrictive measures carried out by other Council preparatory bodies/Coreper. Nevertheless, this role has its formal boundaries, represented by areas of restrictive measures for which other WPs are already responsible. Reflections of DUWP role in the mandate will seek clarity/guidance on the limitations, still be “future proof” for a role that may be requested, and possibly acknowledge the distinct, including legal, differences pertaining to dual use control and restrictive measures respectively.

The importance of transparency and allowing time for EUMS to contribute has been highlighted in this regard as well. The name of the DUWP will not be changed.

TF will have one last round of discussions by 24 March to finalise the mandate before its submission to the group. At April meeting, DUWP will be invited to discuss and endorse the proposed revised mandate with the aim of sending it to the COREPER for approval at one of its May meetings.

2. Implementation and Enforcement of the Regulation EU 2021/821

I) The annual update of Annex I – state of play

The draft proposal for a Delegated Act amending Annex I of DU Regulation has been circulated to MS and to the EP. The changes will be presented to the DU Coordination Group on 15 March. The invitation to participate in that meeting was extended to the Council and the EP. Draft will be finalised in view of comments received. The aim is to finalise the DA by the end of March, in order to launch internal interservice consultation by the Commission during April. The COM is following the timeline as planned, the Delegated Act is likely to be adopted early July.

II) Updates on work in technical groups

The Commission gave a brief outlook on the progress of work in technical groups.

ETEG: the latest meeting took place on 10 March. Good progress recorded on several aspects.

Work on EU Risk Assessment Framework for emerging technologies was concluded, ETEG agreed

on the content of the draft emerging technologies assessment form. Now the technical experts focus on risk assessment for quantum technologies.

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STEG: During the last STEG technical experts continued to discuss the draft guidelines for exports of cybersurveillance items. No major issues are pending, the text should be finalised during upcoming STEG meeting on 16 March, to move forward with public consultation in March. Next STEG meeting will also discuss Annex B of the Transparency guidelines (related to cyber).

DCT-TEG: the latest meeting took place on 13 March. The group reviewed the outcome of the public consultation and continued discussions on draft guidelines. **DELETED**. COM is looking forward to swift adoption of the guidelines to allow for a timely start of the annual reporting exercise.

Concerning the final steps for the adoption of the transparency and reporting guidelines, the Chair of the DUWP highlighted that the main responsibility of the elaboration and finalisation of the guidelines remains under DUCG, however DUWP will be invited to consider them and to formally approve them. As these guidelines would be one of the very tangible results of the new DU Regulation, the Presidency will consider if COREPER is to be informed about the publication of the guidelines. DUWP will be informed about the envisaged procedure as soon as possible.

ECM: a meeting was planned but postponed from 16 March to a later date.

CB-TEG: the work is ongoing. DUWP will be informed at a later meeting.

On **PEGA:** the scheduled hearing by PEGA committee at the EP did not take place. Instead, PEGA committee discussed amendments to the draft report. As next steps, COM outlined that MEPs will vote on 26 April on the draft report, with Plenary vote to follow in June. Both report and recommendations by PEGA Committee make strong references to DU Regulation.

MS asked whether an action is expected from the Member States in reaction to PEGA's report and recommendations. COM replied that there might be a public audition with Commissionaire Dombrovskis and in this respect, MS views on the issue would be useful.

COM invites MS to share their observations and elements of response, either collectively or bilaterally. Likewise, STEG could have an exchange of views to analyse recommendations by PEGA to prepare for the public audition in spring. Whilst not opposing the investigation, one MS was cautious about PEGA recommendations, as products in question are not of EU origin.

CY highlighted that it has been targeted by PEGA committee and had received many remarks and recommendations. These issues are considered with seriousness and CY will provide an answer to the report.

The Chair concluded the item by seeing value to continue the exchange and to follow this topic closely, both the hearing by PEGA and possible recommendations.

III) Changes to national export control policies.

See NL intervention under item 'Export controls in a broader context'

VI) Cooperation with Third Countries

- ***EU-US TTC Export Control Working Group***

Launching the topic, Chair of the DUWP recalled that the next principals meeting should take place early June in Sweden. The programme and date will be shared when available.

In a short presentation, COM focused on the state of play of the implementation of the EU-US TTC Export Control WG work plan. Until now, two actions have been delivered: the exceptional update to Annex I (AG controls) in coordination with US and EU-US dynamic regulatory alignment that will both constitute concrete outcomes for TTC 4. Also two joint stakeholder events have taken place. Currently ongoing actions relate to the information exchange on US risk assessments and control parameters for unilateral and extraterritorial rules and impact on strategic supply chains; EU-US coordinated implementation and information exchange on sanctions; cooperation in support of capacity-building initiatives (promotion of e-licencing) and evaluation of stakeholders' proposals for concrete actions.

The ongoing work in STEG on risk assessments for the application of controls on surveillance technologies and human rights, and on emerging technologies (quantum) will directly feed into TTC Export Control WG7 work on sensitive dual-use technologies.

Information exchange on US risk assessments and control parameters for unilateral and extraterritorial rules and impact on strategic supply chains is also ongoing.

In their comments, MS asked for timely preparations for the upcoming EU-US TTC meetings. During its April meeting, DUWP will prepare inputs for the next EU-US TTC Export Control WG to take place early May, before next ministerial meeting.

- ***Other countries***

The Chair of the DUWP recalled the letter sent by Israel containing Israel's request for a dialogue on Export Controls. The main issue raised by Israel was that it would like to understand the process for determining which countries are covered by the general authorisations, and the ways to improve Israel's status under the regulation.

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The Chair concluded that MS had provided good inputs and clear indications, COM will continue to refine considerations without any formalisation of the outcome. Further MS comments are expected by COM in writing.

VIII) Tour de Table on Implementation and Enforcement of the Regulation EU 2021/821

Launching the topic, the Chair of DUWP recalled the reason for these *Tour-de-Table*, notably to promote and strengthen the implementation and enforcement of the EU Dual-Use Regulation.

In support of that goal EU MS are given the opportunity to inform and exchange on issues of implementation and enforcement of the Dual-Use Regulation.

Article 9 and 10 - National Control Lists

MS continued exchanges of best practices concerning implementation of Article 9 and 10 of the DU Regulation, started at DUWP meeting in February.

Sharing the views on experience of using their own or another MS national control list, delegates outlined the following elements:

Considerations for use: measures must be published by the Commission and exporter should be duly informed by the competent authority of the MS. The reasons for the introduction of controls must be duly justified, such as ensuring public security, preventing proliferation of WMD or preventing acts of terrorism. Also the fact that another MS has adopted its national control list is a strong argument to adapt similar controls through national legislation.

In general, the large majority of MS considered the use of Articles 9 and 10 very relevant and valuable to prevent misuse, especially in light of current difficulties to adopt new controls in WA regime and to harmonise controls at EU level.

As for the **application of national control lists**, a large number of MS considered that case-by-case approach should be favoured, based on appropriate risk assessments. Limiting controls to destinations only would be seen too sensitive or discriminatory, although they seem to be very effective. Most of MS would consider non-destination specific controls of specific dual-use items, or controls of an individual product to a concrete destination.

Almost half of the MS reported having no national control lists adopted, although they would be ready to adopt one, if needed, and are following closely other MS lists.

Several delegations highlighted that it would be very important to ensure a rapid publication of compiled national lists by the Commission, to enable Article 10 implementation.

One MS suggested to have a broader discussion at coordination group level on the implementation of national lists.

Those MS that are using national control lists explained that in some cases they have introduced controls on items only to some destinations of concern, depending on the case and the item.

National control lists are usually introduced where application of Article 4 is not relevant, after a thorough risk assessment and controls are limited to certain destinations and certain items, on the basis of a political decision. They also highlighted that controls seem to prove effective and low number of applications have been registered since they are in place.

On experience regarding the implementation of national control lists, MS reported that it is crucial to have a technical description of the item available for exporters and that they are duly informed. MS also highlighted that in general they have observed a good conformity with controls by the exporters. One MS pointed out that for some companies in specific sectors, such as aeronautics, additional controls can be a severe obstacle, especially when it comes to relaunching the exports.

As **other considerations** delegations mentioned that national controls should be defined in a neutral way, as they are designed as a long term measure. In this respect, destination based controls can lose their relevance quite quickly. Those MS that consider to implement new national controls, mentioned specific cases of export controls on semiconductor related technology or quantum computing or additive manufacturing.

COM welcomed the discussion and concluded that provisions seem to be relevant and should continue to be mobilised in the future. COM is ready to support delegations in preparation of their national controls. Furthermore, COM took due note of the need to publish the compilation of national measures as soon as possible, concluding that thorough application of Articles 9 and 10 would give better possibility to the EU to respond quickly to new challenges related to emerging technologies.

Concluding the item, the Presidency outlined that next topic for DUWP TdT discussion would be ITT and Academia, namely, the Export Control of Academic Publications.

3. Export Controls in a Broader Context

I) EU Chips Act.

DUWP received a presentation by DG CNCT (Francisco Ibanez, Laura Jugel, Electronics and Photonics Industry Unit) on the EU Chips Act. The briefers recalled the context that was mostly impacted by the recent crisis and led to the EU action. The following elements were highlighted: severe shortage of semiconductor chips, due to accelerated digital transition, increased demand for semiconductors, concentration of production in Asia (Taiwan, Korea); security supply risk in EU, due to limited capabilities in manufacturing, insufficient expertise, high costs for new facilities, geopolitical tensions; and detrimental effect across industries, as semiconductors are central to competitiveness, security, safety and data protection, energetic performance of digital systems. In this respect, the Commission has assessed the impact, including by launching the Chips Survey that highlighted that industry expects demand for chips to double by 2030.

The assessment also showed EU strengths, such as R&D, manufacturing equipment, raw materials. EU gaps are mainly IP & digital design area, design tools, manufacturing and packaging.

Focusing on the basis for the EU Chips act, the COM briefers mentioned the aim to jointly create a state-of-the-art European chip ecosystem, that includes production, a world-class research, design and testing capacities. This would be achieved by fulfilling five objectives: strengthen EU's research and technology leadership; build and reinforce its own capacity to innovate in the design, manufacturing and packaging of advanced, energy-efficient and secure chips, and turn them into manufactured products; put in place an adequate framework to increase substantially its production capacity by 2030; address the acute skills shortage, attract new talent and support the emergence of a skilled workforce; develop an-in-depth understanding of global semiconductor supply chains; to take appropriate measures when necessary.

COM then focused on the 3 pillars underpinning EU Chips Act:

I) Chips for Europe Initiative:

“Bridge the gap from lab to fab”: Initiative on infrastructure building in synergy with the EU's research programmes and Support to start-ups and SMEs to make the R&D ecosystem faster in terms of quick innovations that are ready-for-market, user- and industry-friendly.

II) Security of Supply

First-of-a-kind semiconductor production facilities. Companies can apply with a number of conditions and criteria and up to 100% of the funding gap will be covered as state aid.

III) Monitoring and Crisis Response

This pillar focusses on crisis management and establishes an infrastructure to identify impending shortages as quickly as possible and counteract them through joint resource planning. For this purpose, a new “expert group” has been convened, which has already held its first meeting and is eventually to become the “European Semiconductor Board”.

A three-stage model is to monitor, trigger and – in the worst case – the crisis stage. Thereafter a toolbox comes into play.

Outlining the content of the ‘emergency toolbox’, COM presenters highlighted that it would be used only in extreme emergencies when COM assessment provides evidence that there are reasonable grounds to believe that there would be serious disruptions in the supply, entailing negative effects on sectors and preventing repair and maintenance of critical products.

Besides information gathering, priority rated orders and common purchasing, COM foresees export controls as ultimate tool to exercise surveillance over certain exports under Regulation 2015/479. In a semiconductor crisis, the European Semiconductor Board should discuss the possible imposition of protective measures and provide a non-binding opinion

Concluding the presentation, COM briefers explained that any export authorisation scheme would be introduced under the existing EU framework of common rules for export and in full compliance with international obligations for each individual decision.

DUWP followed briefing by *Jan-Peter Kleinhans*, Head of the **Technology and Geopolitics division, Stiftung Neue Verantwortung** (Germany based Tech-Policy non-profit Think Tank, main work trends focuses on analysis of market dynamics within the global semiconductor system, assessment of vulnerabilities and interdependencies and effects of geopolitics, development of recommendations for EU policy makers on semiconductor ecosystem (incl. on EU Chips Act).

In his presentation Mr *Kleinhans* focused on four issues:

1) The global semiconductor value chain - susceptible to geoeconomic measures.

To understand semiconductor ecosystem it is important to break down different parts of the value chain. Semiconductor manufacturing englobes several production steps – from the conception and design to wafer fabrication and assembly, packaging.

Different companies focus on concrete steps, end products and markets are different and cannot be substituted. There is a division of labour across the world – some companies design only the software, some specialise in manufacturing equipment (such as machine tools), some on lithography (Dutch company ASML), some on chemicals, wafers or packaging. For every single step there is a consolidated market and in some parts only one company controlling the majority of the markets (such as Cloud AI/ML training: Nvidia (US) > 85%, or three US companies detain more than 80% of Electronic Design Automation market).

The global semiconductor value chain will continue to depend on transnational division of labour. Due to the high level of interdependency of different companies involved in semiconductor ecosystem, if countries are globally expanding export controls for economic security reasons, there can be a situation where everyone can seriously disrupt the activity of the other.

II) The US “red line” towards China (Export controls of 7 October 2022)

Analysing US controls, Mr *Kleinhans* pointed out that US red line was defined walking down the production line. In his view, the US reasoning was not about chips for tanks or missiles, the non-proliferation not being the core focus. In US view, the next war will be planned/simulated via machine learning and whoever has the better compute infrastructure has strategic advantage.

US export controls do not target the whole CN semiconductor industry. Currently, the US is seeking to “freeze” China’s technological capabilities in several semiconductor technology areas and to prevent CN becoming the leader in global semiconductor value chain.

Export controls from October 2022 work on several levels of the production stack: export controls of foreign high-performance (cloud) chips to China, control of the production of Chinese high-performance (cloud) chips by foreign foundries, controls on construction of advanced fabs in China, controls on exports of manufacturing equipment to China and controls on export of components for Chinese equipment suppliers.

This is an iterative process and adjustments will follow, as the US is expected to take supplementary measures to close possible loopholes. The US government sees broad technological leadership over China as a vital national security issue, however it is clear that the very convincing argument of national security has been intermingled with economic security concept. Reasoning behind the US export controls seems to be much more a matter of economic security – to secure the long-term competitiveness of US incumbents. For example, the US export controls on memory chips are an industrial policy measure not grounded in national security considerations, but a tool for keeping a highly subsidized Chinese manufacturer (YMTC) out of the market.

III) Who can identify, assess and manage interdependencies/chokepoints in EU?

Mr *Kleinhans* considered that if the EU is serious about its strategic autonomy, it would need to identify, assess and manage interdependencies, starting by developing the relevant in-house knowledge. In this respect, governments need to invest in their own capacity to understand the characteristics and dynamics of the semiconductor value chain, to identify interdependencies and chokepoints. A government value chain mapping could identify long-term interdependencies and choke points through a structured framework. Such a mapping would function as the analytical foundation to deploy policy tools to curb technology transfer, establish partnerships with like-minded countries, and strengthen domestic semiconductor ecosystems.

At the moment, the EU clearly lacks resources, capacity and knowledge to assess and manage in various sectors the specificities of semiconductors. If EU wants to protect itself from unfair practices and to diversify supply chains, it needs to have an understanding.

The EU would need appropriate (in-house) resources, new capabilities to map tech-ecosystems; and to analyse impact of current/future US export controls in emerging & foundational technology and to identify dependencies on foreign technology providers that impact European member states’

The best solution would be to establish a centralised research unit in each national administration (or at EU level) that only focuses on mapping and analysing the ecosystem and would be able to provide expertise to the companies and governments on supply chains, risks, interdependencies and possible steps to be taken.

IV) China’s retaliation

In Mr *Kleinhans*’ view, China can and will retaliate, only question is when and how strongly. In chips, China is heavily dependent on foreign technology, however, the US export controls incentivized Chinese OEMs (smartphones, automotive, industrial, etc) to look for domestic suppliers. Furthermore, China is an important player upstream (raw materials and wafers, such as Gallium-Nitride or Silicon-Carbide) and down-stream (semiconductor packaging, assembly).

The briefer concluded that international partner(s) are driving the expanding application of export controls and will continue to do so.

Therefore, the EU needs to invest in its own resources to identify, assess and manage chokepoints in technology ecosystems. Case by case, MS must answer the question whether export controls are a means to an end to achieve different policy goals – from national security to industrial policy.

In the ensuing debate, MS thanked all the briefers for a very detailed and timely presentation. MS questions related to the main differences between EU Chips act and US Chips Act and how the Commission is prioritising actions to overcome EU gaps of not having technology and reinforce strengths, such as a know-how and research. On MS question what could be other types of dual-use technology to which one should pay a particular attention, Mr *Kleinhans* outlined in particular biotechnologies, quantum computing, photonic.

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In final remarks, COM (DG Trade) confirmed calls for the Europeanisation of the export controls on advanced technology in the absence of global policy. DU Regulation gives some flexibility to react with a national control list if the regimes fail. COM stands ready to work with Member States in developing a EU approach on export controls proactively and sees a need and value of these measures to be taken at EU level. COM will continue close consultations with MS and welcomes any further observations and comments.

4. Restrictive measures Russia/Belarus related to dual-use

The Commission took stock of the state of play of the export restrictions on dual-use items and advanced technologies, focusing on prospects for 2023 (Presentation available in DUeS). COM recalled unprecedented level of the restricted measures targeting RF applied since February 2022 and the conditions of their imposition. The time is now ripe for the assessment on how these were coordinated together with MS and what should be done better in the future. COM shared view that the conflict seems to prolong and restrictive measures are to be approached from a long term perspective.

In total, 10 packages of sanctions have been adopted, including on dual-use goods exports.

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- The Presidency shared information on Non-proliferation and disarmament Directors meeting in Stockholm: a topic for discussions will focus on strategic export control. Draft annotated agenda will be sent out soon. DUWP experts were invited to engage with NPD directors directly and coordinate national inputs for the debate. Hope this would contribute to an increased understanding of the importance of export controls and their place in broader context.
- The Presidency informed the Group about a possible change of the June meeting date: 12 June instead of 15 June, to be confirmed.

5. Next DUWP meeting: 13 April
