



Council of the European Union
General Secretariat

Brussels, 09 April 2025

WK 4685/2025 INIT

LIMITE

**DUAL USE
CONOP
COARM
POLCOM
CFSP/PESC**

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

MEETING DOCUMENT

From:	Presidency
To:	Working Party on Dual-Use Goods
Subject:	Evolution of the dual-use export controls - Discussion paper

Delegates will find attached a discussion paper prepared by the Presidency to frame the discussion at High-Level Working Party on Dual Use Goods that will take place on 24 April in Brussels.

High-level Working Party on Dual Use Goods

Evolution of the dual-use export controls

Discussion paper

In light of the High-Level meeting on 24 April 2025, the Polish Presidency of the Working Party on Dual Use Goods (DUWP), would like to present a discussion paper to introduce and underpin the discussion on the topics proposed for the exchanges between Member States' representatives.

I. Evolution of dual-use export controls in the current geopolitical context

Since the end of the Cold War, export controls have remained fairly neutral. In a world of the “end of history” and globalization that was supposed to bring us peace, export controls have been aimed at:

- supporting arms export controls by controlling the export of products that are designed for civilian purposes but can also be used for military purposes;
- non-proliferation of weapons of mass destruction (chemical, biological and nuclear weapons);
- preventing the export of dual-use items that could be used for internal repression and surveillance of societies in violation of human rights and international humanitarian law.

However, recent years' geopolitical developments and the prospects of an increasingly polarised global situation, has caused an increased focus on export control.

Since 2016, we have been assisting interesting dynamics in United States (US) and People's Republic of China (CN) relations. The growing rivalry between those two actors has encompassed both the trade war (tariffs) and the technological war (maintaining advantages). Following the US export control reform in 2018, the access to key US technologies is being gradually restricted.

This applies primarily to so-called emerging technologies such as AI, semiconductors, and quantum technology. It is no longer about their possible military applications (although of course there are such applications and this is also a concern), but a race to see who will take the lead in the development of these technologies and become their main supplier in the world. Victory in the technological field will not only provide an advantage in the military field, but also in the economic field.

Furthermore, the introduction of sanctions against Russia, in light of its war of aggression in Ukraine, has also ensured the dynamics of export controls. Export controls are now perceived as one of the pillars of the new sanctions system, which aims to force Russia to cease its war activities. For 30 years, export controls have not been directly aimed at such a large part of the world economy. It should be noted that the sanctions do not only concern exports to Russia (RU) and Belarus (BY) but also introduce new rules for conducting exports to other third countries (many requirements related to due diligence, contractual clauses). The Member State's administrations have faced a new, major challenge, which has become the effective enforcement of sanctions and counteracting the circumvention of sanctions (including the use of the catch-all clause). It is difficult to assess at this point how the future of sanctions will shape up, but most likely they will remain with us for a longer time.

1. *The new challenges*

The new challenges that the world poses to us are addressed, for example, by the US and CN using many different means. These include customs tariffs, FDI screening, outbound investment screening measures, securing supply chains, becoming independent from raw materials and diversifying their sources, and subsidizing key sectors for the economy. Export controls are also used as one of the tools to achieve economic advantages.

The US, in October 2022, introduced export controls on advanced computer components and semiconductor production to China. The aim of these measures was to limit the production capacity of advanced semiconductors, which can strengthen CN military and industrial potential. More recently, in January 2025, the US introduced the AI Diffusion Interim Rule, the aim of which is to limit access to advanced integrated circuits and some models of artificial intelligence. On its side, CN, under its Export Control Law from 2020, imposed stringent controls on dual-use items, including goods, technologies, and services and has introduced, most recently, export controls on a number of raw materials such as

gallium, germanium, graphite and antimony, as well as on technologies for the production of electric batteries.

As the reason for these controls, CN indicates national security and the fact that they may have dual-use potential. However, it should be noted that in practice these restrictions have a greater economic significance for third countries than limiting their military capabilities.

2. National security

It is worth noting that both the US and CN justify the introduced national export control measures on the basis of national security concerns. Some of these measures have a largely protectionist dimension, such as maintaining technological advantages, limiting access to key raw materials and preventing the development of key sectors of the economy (semiconductors, electric batteries, photovoltaics). It seems that these countries define national security differently, in a way that it also covers economic security aspects.

EU dual-use export control system focuses on the non-proliferation of weapons of mass destruction as its main objective. Moreover, this objective is linked to the adherence to multilateralism in this area, i.e. to the multilateral non-proliferation regimes. This is reflected in both the recitals to the Dual Use Regulation 2021/821 and the legal provisions themselves. For example, Article 17 makes the amendment of the control list dependent on the consensus of the aforementioned non-proliferation regimes.

It is worth noting that in these days, in the EU, national security policy (Article 15 paragraph 1, point c) or national security of the Member States (criterion 5 of Council Common Position 2008/944/CFSP) has become a fairly important criterion to be taken into account in export controls. Also, article 9 of Dual Use Regulation 2021/821 allows for the introduction of national control lists for public security reasons. A number of EU Member States have introduced their national control lists justifying them on grounds of national/public security. Therefore, this raises the question in Europe of how do we define national security policy today and whether the EU's export control system on dual-use should not take these objectives related to national/public security more into account.

3. Coalitions

The implementation of stricter export control policy in the economic context cannot take place without building coalitions. The US, while tightening export controls on certain technologies, simultaneously allows access to them only to individual countries.

In connection with this, it allows for mutual benefits resulting from trade in these goods and technologies, but in appropriate directions and with the assurance that these goods and technologies will not be re-exported without the consent of the US. The AI Diffusion Interim Rule of January this year showed, however, that these coalitions do not have to take place between the US and the entire EU. The AI Diffusion Rule established unlimited access to AI-related goods and technologies for some EU countries. On the other hand, the remaining part of the Member States was limited by quotas for these goods and technologies.

For years, Wassenaar Arrangement and other international non-proliferation agreements and export control regimes were the primary generator for EU member states' adoption of export control lists. However, while Member States still see benefits of multilateral export control regimes, we are witnessing a retreat from multilateralism. Since 2022, adoption of new items of emerging technologies has been hampered by certain WA member states, mainly Russia. The erosion of international non-proliferation regimes makes visible growing importance of building bilateral or plurilateral alliances, which can encompass not only export controls but also foster joint development of key technological sectors.

4. European Economic Security Strategy

In face of these developments, the EU is not remaining passive. On 23 June 2023, the European Commission and the HR/VP published the “Joint communication to the European Parliament, the European Council and the Council on the European Economic Security Strategy”. As indicated in the Strategy, the aim was to “provide a framework for a robust assessment and management of risks to economic security at EU, national and business level, while preserving and increasing our economic dynamism. This is more important to put in place at a time when these risks are both evolving rapidly and merging with national security concerns. A prime example of this is the speed with which critical new technologies are emerging and blurring the boundaries between the civil and military sectors.”

It is worth noting that the EU must also, among other things, be able to “protect or create technological advantages”. Export control is, therefore, seen as one of the tools to achieve the goals set for the European Economic Security Strategy.

In an effort to increase Member States’ cooperation and alignment on dual-use export controls, following the European Economic Security Strategy, in January 2024, the European Commission published a White paper on export controls¹, in which it outlined four proposals to initially strengthen export controls in the EU. In May 2024, the EU Council reacted to the European Commission proposals, responding to each of them and committing to actively continue working with the European Commission to develop these proposals². While the Member States along with the European Commission are still working on the proposals from the white paper, the European Economic Security Doctrine is being developed under the leadership of the new Commissioner for Trade and Economic Security, and will be published later this year.

Guiding questions:

- 1. Taking into account the current context, do you consider that EU’s dual-use export control policy is still adequate to deal with today’s global challenges and is sufficient to uphold European security? What role do you see for the EU and its Member States in this respect?**
- 2. How do you define national and public security in export control policy, taking into account the current developments (sanctions, economic security, third country policies and their impact on the internal market, emerging technology)? Do you see any other objectives that dual-use export controls should pursue – beyond traditional peace and security considerations? What role do you see for export control in light of the European Economic Security Strategy and the upcoming European Economic security doctrine?**

¹ White Paper on Export Controls, 2 February 2024, (ST 5859/24)

² Council Conclusions on White Paper on Export Controls, 31 May 2024 (9439/24 COR 1)

II. **Current EU export control framework: developments, evolution and assessment.**

Current legal framework – Regulation 2021/821 has been adopted in 2021. Since then, the US relations with the CN have gained new dynamics. In such a globalized world, the impact and consequences of tensions and export control measures imposed by the US and the CN affect the EU as well. At the same time, the war in Ukraine has escalated and the EU has imposed unprecedented sanctions on Russia and Belarus. Due to the above, and despite the fact that Regulation 2021/821 is a relatively new legal act, the European Commission in its White Paper on Export controls proposed an accelerated evaluation of Regulation 2021/821 and to carry it out in 2025.

The above Commission proposal prompted the Council to refer in its Conclusions on the White Paper ³ to this proposal:

9. CALLS upon the Commission and the Member States to first and foremost implement the current Regulation (EU) 2021/821 and make full use of existing instruments available for the control of dual-use exports.
10. CONSIDERS with interest bringing forward the timing of the evaluation of the Dual-use Regulation (EU) 2021/821 with a view to strengthen in its effectiveness and efficiency.
11. INVITES the Commission to involve the Member States in establishing terms of reference of the study supporting the evaluation.
12. INVITES the Commission to keep the Council informed of the implementation of actions, including by reporting to and seeking feedback by the appropriate Council preparatory bodies, such as the Council Working Party on Dual Use Goods.

³ Council Conclusions on White Paper on Export Controls, 31 May 2024 (9439/24 COR 1)

Due to the above, the Polish Presidency considered it useful to initiate a discussion about preliminary assessment of the Regulation 2021/821 in the Council of the EU.

The aim is to take note whether Member States already see areas that potentially require evaluation or revision. The results of this discussion may influence the direction of further work by both the EU Council and the European Commission.

In its White Paper on Export Controls European Commission also called for regular meetings at an appropriately higher level to set the direction for the policy work in light of the evolution of export controls in the EU. Therefore, the Polish Presidency would like to seek Member States views on the value of such regular exchanges at senior level and whether this practice should be taken forward by incoming Presidencies of the Working Party on Dual Use Goods.

Guiding questions:

- 1. How do you evaluate the current EU dual-use export control framework? What should be addressed as a matter of priority in order to make full use of existing instruments available for the control of dual-use exports? What areas of the Dual-use Regulation 2021/821 would require further work in order to reach its full implementation?**
 - 2. In your view, what issues should the European Commission take into account in the upcoming evaluation of the legislative framework? Do you see areas that require a legislative response at this point or an update?**
 - 3. Do you see need for regular meetings at senior level to exchange on export control policy? If so, how can these help in shaping the future work on the EU's export control policy?**
-