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Joint statement by European business on the recast of the EU Regulation on Dual-Use Export Controls

European companies recognise the need to review the EU Regulation on Dual-Use Export Controls (Regulation 428/2009). In this regard, it is essential that the Regulation strikes the right balance between security considerations and imposing unnecessary restrictions on European companies which would lead to an unwanted competitive disadvantage for the European industry in the midst of an important technology shift.

As the EU Regulation on Dual-Use Export Controls applies directly to the members of our associations, we would like to express a number of key concerns and would like to welcome several positive proposals in the context of the ongoing tripartite meetings ('trilogues') between the European Parliament, the Council of the European Union and the European Commission.

Key concerns

Avoid diversion from multilateral export control regimes

- The EU must avoid a diversion from multilateral export controls regimes such as the Wassenaar Arrangement and should refrain from adopting unilateral export controls. A multilateral approach is more effective than a unilateral approach as EU unilateral export controls would allow the unrestricted supply of dual-use items to continue from outside the EU.
- Autonomous measures have a negative impact on the global level playing field. In this regard, the EU should refrain from creating an autonomous control list. While European business generally supports the principle of a lists-based approach, it is important to note that this measure will harm EU competitiveness as our competitors are not following our pace. Instead, the EU should discuss the issue of controlling dual-use items in the relevant international export control regimes.

The proposed catch-all controls will not have the desired effect and will hurt EU competitiveness

- European business recognises and supports that human rights violations and terrorism are global problems, which need to be urgently addressed but, in our view, the proposed catch-all controls will not have the desired effect and should therefore be removed from Article 4.
- The proposed catch-all rules are unclear, vague and create legal uncertainty for business. As a result, companies will engage in compliance activities that go beyond what is necessary ('overcompliance') to mitigate compliance risks and avoid possible penalties. The Regulation must ensure legal certainty for businesses and should not create unnecessary administrative burden for companies.
- Catch-all controls would not only be ineffective to tackle human rights violations, but would also lead to extended delivery times that could paralyse business. The proposed catch-all controls would have severe consequences for export processes and for EU competitiveness.

- A revised EU dual-use regulation should not transfer the responsibility for evaluations of a political nature onto companies as this may lead to the 'privatisation' of human rights. Moreover, government agencies are better equipped than private companies to assess risks as they, for example, have sophisticated intelligence information at their disposal.

The due diligence clause overbears individual business' competences

- The European Commission suggested an exercise of due diligence by exporters concerning possible misuses of their non-listed export goods in destination countries (Article 4(4)). If affirmed by the affected company, this in turn leads to the obligation of an export authorisation. We support the Council's mandate which does not confer such additional responsibilities to individual companies. Placing the onus on businesses might overstrain the financial and human resources of many companies, particularly of SMEs.

The prescription of end-use statements is unrealistic

- European business does not support proposals by the Council that prescribe end-use statements when granting individual export licences. This would lead to unnecessary bureaucratisation of export procedures where authorisation is required. The uncritical end-use is often sufficiently secured even without formal end-use statements and the exemption by national authorities envisaged by the Council is not sufficiently flexible.

Business should be consulted when drafting guidelines

- The process of the preparation of potential guidelines should be transparent and inclusive. European companies have valuable experience and expertise that they can share to contribute to an effective and efficient implementation of the Regulation. For this reason, it is essential that business and other stakeholders are consulted as soon as possible when the Commission desires to prepare guidelines, for instance in the work of the so-called coordination group, its sub-committees or in informal expert groups.

Positive proposals

The introduction of new EU General Export Authorisations (EUGEAs)

- European companies welcome the introduction of new EUGEAs, including on encryption, intra-company transmissions of software and technology as well as on low-value shipments. While these are positive developments, the Commission and Council proposals for new EUGEAs require some fine-tuning to make these solutions practical for exporters and beneficial for the European economy.

The extension of the validity period

- Extending the validity period for individual export authorisations and global export authorisations will stimulate and facilitate businesses in their operations as it will offer companies more planning security. The initial one-year proposal however is too short and will increase the administrative burden. Instead, the European industry welcomes the proposal by the European Parliament to extend the validity period to two years. A further extension should be considered, especially because national authorities have the option to withdraw licenses at any moment when necessary.

Intra-EU transfers

- European companies furthermore welcome the Commission's proposal to limit the list of items that are subject to control within the EU (Annex IV) to the most sensitive items. This will facilitate intra-EU trade of dual-use items and reduce the administrative burden for companies.