

# **Incentives of Europe for Non-Proliferation Outreach Activities**



**Incentives  
of Europe for  
Non-Proliferation  
Outreach  
Activities**

# Contents

## **Introduction** 7

---

## **Part 1.** **Amending the EU dual-use trade control system** 11

---

**Chapter 1.** The recast of the EU dual-use trade legislation from national perspectives: Spain 13

---

**Chapter 2.** Human security and outreach programmes: the recast of the EU dual use legislation from an Italian perspective 35

---

**Chapter 3.** Capacity building, Croatia and South East European region in the recast of EU dual-use regulation 2015/2017 context 51

---

## **Part 2.**

### **The EU outreach programme** 61

---

<b>Chapter 1.</b>	EU export control outreach: quo vadis?	63
<b>Chapter 2.</b>	Export control capacity-building: an analysis of US and EU assistance programmes	77
<b>Chapter 3.</b>	Non-proliferation outreach: an NGO perspective	93
<b>Chapter 4.</b>	Promoting trade and security objectives through a trade controls outreach model	107

---

## **Part 3.**

### **Trade and security in the outreach activities** 125

---

<b>Chapter 1.</b>	Looking for the correlation between EU international trade policy and its dual-use export controls outreach programme: the WMD clause coherence	127
<b>Chapter 2.</b>	Outreach activities: harmonisation or standardisation of security postures?	147
<b>Chapter 3.</b>	Outreach activities and sanctions: a(n) (im)possible relationship?	157
<b>Chapter 4.</b>	National interdiction mechanism as a tool for enhancing counter-proliferation capabilities	177

---



# Introduction

The seventh gathering of the Chaudfontaine Group was a joint endeavour between the European Commission's programme EU P2P and the University of Liege. It was dedicated to nuclear, chemical, biological weapons, their means of delivery, and non-proliferation outreach activities. The selection of the topic came from observations that have been made over the course of ten years of participation in outreach activities organized by the EU and other international donors to fight against the proliferation of Weapons of Mass Destruction. Such initiatives were reinforced, if not initiated, by UN Security Council Resolution 1540, which invites States in a position to do so to offer assistance as appropriate in response to specific requests of States lacking the legal and regulatory infrastructure, and implementation experience.

Considering the amount of money invested by the US and the EU, the quantitative output in terms of countries that have developed or strengthened their strategic items trade control system seems rather mixed. Some countries targeted by regular activities (general and specific seminars, country visits...), since the first phases of those programs are still considering the possibility of developing a system, while others have achieved it.

For EU candidate countries, the necessity to integrate the *acquis communautaire* constitutes as strong incentive, for others the reasons of success and non-success are difficult to identify.

Moreover, symptoms of non-proliferation fatigue have started to spread among actors and beneficiaries of outreach activities. This weariness has even increased due to competition among donors, more specifically the US and the EU, offering often rather similar activities or even duplicated ones.

To counter the non-proliferation fatigue and to better allocate resources according to beneficiaries' needs, the EU has fundamentally reviewed the methodology of its outreach program. The new

one, called EU P2P (partner to partner), is based on the 3WH methodology (Why, Who, Who and How) that includes beneficiaries in the definition of potential areas of assistance and cooperation, and attempts to increase the political understanding to review the national trade control system.

Other factors that will also impact the content of EU outreach activities include the ongoing recast of the EU Regulation dedicated to dual-use items trade control, and the possibility that the scope of control will be extended to human security (serious violations of human rights or international humanitarian law in situations of armed conflict or internal repression in contradiction of such rights).

Against this changing non-proliferation environment, the “Chaudfontaine outreach activities debate” has been articulated among three chapters. The first is dedicated to the recast of the EU dual-use trade legislation from national perspectives, and whether it has an impact on EU and Member States outreach activities.

The second assesses outreach activities as a tool to develop international trade standards, and the third analyses the statement that outreach activities are a tool to enhance security.

The different chapters of this book feature participants’ contributions, which were triggered by discussions during the two-day debate.

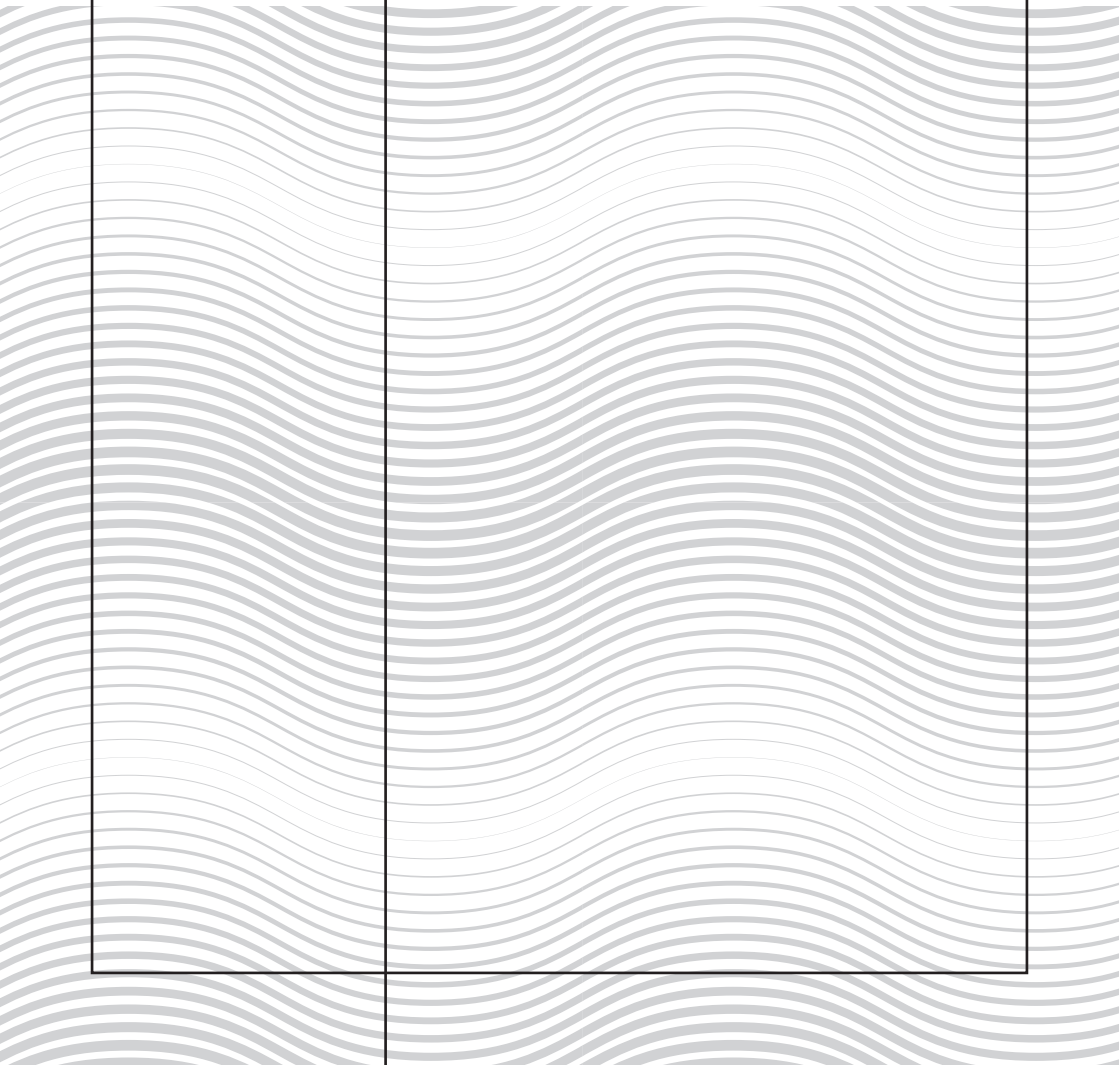






**Part  
1.**

**Amending  
the EU dual-use  
trade control  
system**





# The recast of the EU dual-use trade legislation from national perspectives: Spain

Ana Sánchez Cobaleda

## 1. HOW THE MOGHERINI STRATEGY HAS AFFECTED THE EU DUAL-USE REGULATION – A SPANISH PERSPECTIVE

The European Union stands at a crossroads. This statement seems unavoidable when talking about the EU nowadays. Some of the issues that demand answers from the EU include the political and geostrategic role the EU wants to play in today's globalized world, the Brexit situation as well as other increasing Eurosceptic movements, the security threats posed by international terrorism or how to properly deal with all migration trends. The EU must therefore make effective decisions to avoid that someone else does it instead.<sup>1</sup>

It is within this troubled context and upon these questions that the EU High Representative for Foreign Affairs and Security Policy, Federica Mogherini, presented the new Global Strategy for the EU's Foreign and Security Policy,<sup>2</sup> meant to substitute the former European Security Strategy, presented in 2003 by Javier Solana and reviewed in 2009.<sup>3</sup> This new EU Global Security Strategy

- 
- 1 Bruni, F., Fabbrini, S. and Messori, M., "Europe 2017: make it or break it?", *Policy Brief no. 232*, ISPI, January 2017.
  - 2 European Union, *Shared vision, common action: a stronger Europe. A global strategy for the European Union's foreign and security policy*, June 2016.
  - 3 European Council, *A secure Europe in a better world. European Security Strategy*, December 2003.

is structured around four main pillars: interests of citizens, principles of the external action, priorities of the external action, and implementation of the strategy.<sup>4</sup>

Regarding dual-use control, some might argue that the new Strategy is barely devoting attention to the issue, as the Mogherini Strategy does only use the term “dual-use goods” twice throughout the sixty-page document. However, rather than the number of times it is mentioned, what is worth noting here is the place where these references can be found. As I have just mentioned, the one of the pillars of the Strategy identifies five priorities of the external action of the EU. It is precisely in the context of the third and fifth priorities that we find the only two references to “dual-use goods”.

We first find the term ‘dual-use’ in the context of how to obtain *an integrated approach to conflicts and crisis* (priority no. 3), which stresses the importance of dual-use goods in the frame of conflicts and their prevention. In other words, the Strategy acknowledges the threat posed by the potential military applications of such materials. Secondly, we find the term in the frame of *Global Governance for the XXI Century* (priority no. 5), which shows the importance of dual-use goods in relation to development and capacity building. In short, the Strategy also acknowledges the positive effects of dual-use materials’ civil and peaceful applications.

The Strategy points out that “*the EU must also modernise its policy on export control for dual-use goods*”, and it is in this context that we find the new Commission’s Proposal for an amendment of the dual-use export regulation. This dual-use regulation proposal aims

---

4 The actual names of the four pillars are: “a global strategy to promote our citizen’s interests”, “the principles guiding our external action”, “the priorities of our external action” and “from vision to action”.

to strengthen the EU's existing export control system by including, inter alia, stricter controls for the export of surveillance technology, and a more 'human dimension' in terms of security.<sup>5</sup>

Among all the new aspects of the Commission's Proposal, it is worth highlighting the introduction of the concept of *outreach* and the importance it is given throughout the text.

In the dispositive part of the Regulation proposal, a whole new recital (number 25) was added regarding *outreach*, stating that: "*Outreach to the private sector and transparency are essential elements for an effective export control regime. It is therefore appropriate to provide for the continued development of guidance to support the application of this Regulation and for the publication of an annual report on the implementation of controls, in line with current practice.*"<sup>6</sup>

A new chapter, number VII, is also introduced under the name: *Transparency, outreach, monitoring, and evaluation*. Its first article reads as follows:

It is also relevant to mention the introduction of the *Cooperation with third countries*, (chapter IX), which adds that whenever Member State's authorities consider it appropriate, they may maintain—together with the Commission— regular and reciprocal exchange of information with countries outside the EU.<sup>7</sup>

Consequently, if we merge Mogherini's Strategy and the Commission's proposal, the result is a new policy outline which requires empowered authorities from all Member States. They must now stand for the creation of alliances based on sharing knowledge, cooperating, promoting exchanges and building capacities in developing countries, while widening the reach of international norms, regimes and institutions.

---

5 Due to these sensitive issues, the European Parliament is still preparing its position on the proposal. It was precisely the EP who suggested that the Commission increasingly take human rights into account.

6 *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, Brussels, 28.9.2016.

7 *Ibid*, new article 27.

Spain, as a Member State, is in favour of any initiative that, in terms of security, brings about a deeper level of cooperation and cohesion among EU members.<sup>8</sup> The Union is a strong advocate of a world order in which multilateralism based on International Law is seen as a real guarantee for peace and security in Europe and abroad. In words of Professor F. Aldecoa, “threats are best faced from a European rather than a national perspective”<sup>9</sup>. This political statement is what lies behind Spain’s inclination towards stronger links among EU members.

However, is Spain ready to fully integrate the new EU Strategy? Are Spanish institutions and authorities ready to take in the new commitments required by Commission’s proposal?

Well aware of its most critical security threats,<sup>10</sup> Spain is internationally committed to all main regional and global treaties in terms of security cooperation.<sup>11</sup> In order to comply with its commitments and obligations regarding the new dual-use policy outline, in Spain there are different actors who are already implementing certain outreach activities. As I will explain below, while some institutions work at a national level –either centrally or regionally within the Autonomous Communities in which Spain’s Government is structured– others undertake their outreach programmes internationally.

---

8 Presidencia Gobierno de España, *Estrategia de Seguridad Nacional: un proyecto compartido*, 2013, p 13

9 Aldecoa Luzárraga, F, “Una política de defensa europea compatible con la Alianza Atlántica”, in *Cuadernos de Estrategia 177. UE-EE.UU.:Una relación indispensable para la paz y la estabilidad mundiales*, Instituto Español de Estudios Estratégicos and Instituto de Estudios Europeos de la Universidad San Pablo- CEU, December 2015, p.53

10 International Terrorism, unstable political and social situation in the so-called South Flank of the Mediterranean, especially attention to the constant riots in Lybia, etc.

11 Spain acceded the NPT in 1987 and it ratified the BWC in 1979 and the CWC in 1994.



## 2. SPAIN'S MAIN ACTORS IN DUAL-USE OUTREACH PROGRAMMES

Spain regularly provides bilateral technical assistance in export control issues as well as legislative assistance regarding the implementation of international instruments. It does so in the frame of the CWC and the IAEA, particularly to Spanish-speaking countries.<sup>12</sup>

Theoretical command of international treaties has proven to be quite effective so far.<sup>13</sup>

To simplify the analysis of Spain's main outreach actors, the entities have been divided into three groups, taking into account their legal nature and the kind of dual-use good on which they focus. Therefore, I will first look at (2.a) public entities that offer outreach programs for any kind of dual-use good, I will then analyse (2.b) public entities that offer outreach programs for different categories of dual-use goods –namely chemical, biological and nuclear materials–, and lastly I will draw the reader's attention to the issue of (2.c) private providers of outreach programs.

---

12 Grip, L., "The role of the European Union in delivering Resolution 1540 implementation assistance", in *Non-Proliferation Papers*, EU Non-Proliferation Consortium, No. 22, October 2012.

13 Authorities have gained certain practical knowledge through its own experience. For the past few years, Spain has been especially meticulous when implementing export controls regarding, for instance, machinery needed for missiles production. Sánchez Cobaleda, Ana, "Sanctions and penalties for the infringement of dual-use trade controls under Spanish Law", Michel, Q., Jankowitsch-Prevor, O. And Paile-Calvo, S., *Controlling the trade of strategic goods: sanctions and penalties*, European Studies Unit, 2016, Université de Liège, pp.291-294. This accuracy allowed for the detection of several irregularities in the export of centrifuges to countries like Iraq, which is just one of the many events faced by authorities that have proven Spanish controls to be effective in the fight against proliferation. Baumela, J., "En lo que respecta a los riesgos NRBQ, la primera palabra es prevención", in *Entrevista a J. Baumela, El Blog de la FIIAPP*, FIIAPP, 4th July 2014.

## 2.1. Public entities offering outreach programs for dual-use goods in general

### → REOCE & JIMDDU OF THE GENERAL SECRETARIAT FOR FOREIGN TRADE

First of all we find the Public National bodies in charge of controlling all dual-use exports in Spain: the REOCE and the JIMDDU.

The REOCE (Spanish acronym for *Special Registry of External Trade Operations*) is the authority where all exporters must register themselves to be subsequently granted an export license for items subject to export controls.

The JIMDDU (Spanish acronym for *Interministerial Regulatory Board on External Trade in Defence and Dual-Use material*) is the body in charge of granting such licenses.<sup>14</sup> The JIMDDU is also responsible, *inter alia*, for reporting any incident that ought to be recorded in the Special Registry. It also has to issue a mandatory report on any amendment to the regulation governing overseas trading of items subject to export controls. The JIMDDU is administratively attached to the Ministry of Industry, Tourism and Trade and it is composed of representatives of Director-General level –or higher– from that same Ministry and the Ministries of Foreign Affairs and Cooperation; Economy and Finance; Defence; and Home Affairs.<sup>15</sup>

Both these authorities are part of the General Secretariat for Foreign Trade, which in turn belongs to the Ministry of Economy, Industry and Competitiveness. Due to their state level, these bodies have their headquarters in Madrid. However, they also have territorial representations in different Autonomous Communities. These

---

14 Art. 14, *Ley 53/2007, de 28 de diciembre*. The Customs Department and the Foreign Office can also to grant licences and prohibit the transit of certain non-Community dual-use items.

15 Some argue that it would have been desirable to find some parliamentary representation in the Board. Greenpeace, International Amnesty and Intermón Oxfam, *Comercio de armas en España: una ley con agujeros. Recomendaciones al proyecto de ley sobre el comercio exterior de material de defensa y doble uso*, February 2007.

representations (*Direcciones Regionales o Territoriales de Comercio*), issue licences and facilitate that exporter's from all over Spain approach the competent authorities more easily.

This first line of information sharing between the Central Administration and the territorial representations of the General Secretariat of Trade can be seen as a national technical cooperation programme, even if not exactly an outreach programme as such. Autonomous Communities may address the Central Administration to clarify any issues regarding the dual-use export legislation they are implementing. The General Secretariat will solve any possible queries, whether they come from its own representations throughout the country or from private companies wishing to export and facing problems with the legal framework.

### **2.1.1 CHAMBERS OF COMMERCE AND INDUSTRY**

Chambers of Commerce and Industry are Public Law Corporations with legal personality and full capacity to act.<sup>16</sup> Their main function is to represent, promote and defend the general interests of the industries, businesses and services that comprise them. They are configured as consultative and advisory bodies that also collaborate with the Public Administration. They have acting and economic independence. However, they are under public guardianship and therefore administered by the Government.<sup>17</sup>

The main goal of the Chambers of Commerce and Industry is to facilitate external trade and promote international commerce. In order to obtain this objective, they raise awareness on the importance of legal frameworks, drawing attention to the steps that need

---

16 The functioning of the Chambers is ruled by *Ley 4/2014, de 1 de abril*, and by the laws of the Autonomous Community where each Chamber sits. If these lack, then the existing legislation for Public Administration will apply.

17 Although their contracting and patrimonial regime will be governed by Private Law, the procedure must guarantee publicity, transparency and no discrimination. There are Chambers of Commerce in some Autonomous Communities and in some of the country's biggest cities. In those cases, Chambers are under the guardianship of regional or local governments.

to be taken to fulfil all international obligations that actually allow sensitive exports to take place. In other words, the national outreach programmes they provide to Spanish enterprises are not their *raison d'être*, but rather a collateral effect of the pursuit of their main aim: facilitating international trade.

By pursuing their objectives, they offer outreach programs at a national level. The main addressees of these courses are SME (Small and Medium Enterprises), which constitute a majority of Spanish companies.<sup>18</sup> Nevertheless, some workshops and events are also addressed to big corporations, Public Administration Bodies and other institutions.

In this context we find that Chambers of Commerce offer technical courses on *Sensitive goods exports, National and European legislation regarding Dual-Use goods, Registry and Licenses: Law 53/2007...*;<sup>19</sup> ongoing educational courses for businesses, which can take place both *in situ* and on-line; or the design of customized trainings for companies that request tailored programs with regard to their needs.<sup>20</sup>

Some of the biggest Chambers of Commerce also act as clearing houses where companies can find relevant information. They keep an active presence in local, national, regional and global forums regarding external trade, allowing them to always offer updated guidance and advice on any legislative news.

Probably, the most outstanding feature of Chambers of Commerce and Industry is their flexibility. These institutions adapt themselves to the special needs of their addressees, which is, after all, one of the basic characteristics of any successful outreach programme. Their adaptability, together with their good reputation,

---

18 1.291.317 enterprises are SME; they represent the 45% of Spain's industrial fabric. Ministerio de Economía, Industria y competitividad, *Cifras PyME*, Monthly Report, February 2017.

19 Chamber of Commerce of Sabadell.

20 Chamber of Commerce of Barcelona –*Online Campus Empresarial Virtual* or *In company trainings*.

could turn them into an interesting key actor in terms of technical assistance programmes. Once the Commission's proposal is accepted, it may be worth revisiting the Chambers of Commerce and their potential strengths.

### 2.1.2 FIIAPP

The International and Ibero-American<sup>21</sup> Foundation for Administration and Public Policies (from now on, FIIAPP) is a Spanish public entity that has been managing international cooperation projects since 1997. It is regulated by its Statutes,<sup>22</sup> by Public Law<sup>23</sup> and by other rules relevant to its functions.<sup>24</sup> With a budget of over 400 million euros and field-work experience in 160 countries, FIIAPP takes the know-how of Spanish Administration and advises governments on the implementation of public policies.

The scope of activity of this governmental agency for international public-to-public cooperation is very wide and diverse, as it includes CBRN risk mitigation projects. Its line of action seeks to improve other State's legal frameworks, the efficiency of public offices and the citizens' quality of life. They do so by transferring knowledge to leaders and high-ranking officials through R+D+I courses and public leadership trainings.

---

21 'Ibero-America' is a wider concept than 'Latin America', since it also includes Spain and Portugal as part of one same cultural region, along with the countries of the Latin American continent.

22 FIIAPP, *Estatutos de la Fundación Internacional para Iberoamérica de Administración y Políticas Públicas*, Madrid, 2012.

23 *Law 50/2002, 26th December, regarding Foundations* -especially Chapter XI.

24 FIIAPP works transversally in most of the action areas established in *Ley 2/2014, de 25 de marzo*, on Foreign Action and Service of the state, especially Chapter II.

It works at an international level, and just like other technical cooperation entities in Spain, it has a special interest in the 'Ibero-American' region (as evidenced by its name),<sup>25</sup> although it is not the only region where FIIAPP is involved.<sup>26</sup>

FIIAPP's outreach programmes are intended for States and public counterparts who wish to develop their export control capabilities. The type of countries FIIAPP encounters range from States with a relatively high level of industrial development that aim at improving their export regimes, to States that do not even know what CBRN stands for. This demands a high adaptability of the outreach activities to the different contexts as well as a strong empathy for the needs of the addressees.<sup>27</sup>

In the field of dual-use goods, FIIAPP manages best practices exchanges between public administrations, so that public-sector managers who are designing or already implementing new policies in their countries find inspiration or solutions from the lessons learned. Out of these previous experiences, legislators, customs officials or experts from the trade and defence ministries, choose the inputs that can be adapted to their national reality.

---

25 Several countries in 'Ibero-America' are developing a stronger sense of awareness and sensitivity towards dual-use goods control. Brazil, for instance, developed a protection plan for the Football World Cup and the Olympic games in which they included CBRN risks. However, in practice, even if numerous States are starting to be aware of the vital importance of dual-use goods and they apply for training, many of them still lack the resources. Baumela, J., "En lo que respecta a los riesgos NRBQ, la primera palabra es prevención", *Entrevista a J. Baumela, El Blog de la FIIAPP, FIIAPP*, 4th of July 2014.

26 South East Asia, or Western and Northern Africa are regions where FIAPP is implementing some of the EU's CBRN CoE projects: CBRN project 46 '*Enhancement of CBRN capacities of South East Asia in addressing CBRN risks mitigation concerning CBRN first response, biosafety and biosecurity, awareness raising and legal framework*' (together with EU and Italy) 2015-2018; CBRN project 41 '*Risks mitigation in the Atlantic façade*' (led by the AFETI – Agence Française d'expertise technique internationale); or CBRN project 24, '*Identification of materials and citizenship protection*', in Morocco, Mauritania and Senegal.

27 FIIAPP mobilises over 15000 civil servants and experts. [www.fiapp.org](http://www.fiapp.org).

At this point, it is worth mentioning that FIIAPP is generally the entity in charge of putting in place the CBRN projects of the EU Centres of Excellence initiative when the leading partner is Spain or when Spain takes part in them.<sup>28</sup>

## **2.2. Public entities offering outreach programs for dual-use goods in particular (chemical, biological and nuclear)**

### **2.2.1 PUBLIC ENTITIES OFFERING OUTREACH PROGRAMS FOR CHEMICAL DUAL-USE GOODS**

#### **→ ANPAQ**

Spain signed the Convention for the Prohibition of Chemical Weapons (CWC) in 1993 and ratified it in 1997, becoming a State Party to the OPCW that same year.<sup>29</sup> Since then it has become an important asset to the Organization, not only in terms of budget – it has become the 9<sup>th</sup> most important contributor– but also in operational terms. This is due to the fact that Spain hosts one of the 19 OPCW-certified laboratories in the world, authorised to analyse and counter-analyse chemical toxic agents.<sup>30</sup>

ANPAQ is Spain's National Authority for the Prohibition of Chemical Weapons. Just as it is required by article VII.4 of the CWC, all State Parties are obliged to designate or establish a representative called National Authority to ensure that the Convention

---

28 CBRN project 33 'Strengthening national CBRN legal framework and provision of specialized and technical training to enhance CBRN preparedness and response capabilities' (15.Sept.2013-16.Sept.2016); Project 34 CBRN 'Strengthening capacities in CBRN event response and related medical emergency response under strengthened CBRN event preparedness' (until 1.1.2017).

29 BOE núm. 300, de 13 de diciembre de 1996, páginas 37090 a 37150.

30 Gómez Sáinz, N., "La ANPAQ y el control de sustancias de uso dual", in *El papel clave de la química en la seguridad nacional e internacional*, Universidad Complutense de Madrid, Lecture, 11th July 2016.

is implemented effectively.<sup>31</sup> ANPAQ is therefore a public body chaired by the Under Secretary of Foreign Affairs and vice-chaired by the Ministry of Defence.

ANPAQ is in charge of the technical aspects of the CWC and offers outreach programs to Spanish companies that work with dual-use chemical substances or that produce organic chemical substances of different kinds (pharmaceutical products, colorants, essences, etc.). Although Spain did not have any chemical weapons when it ratified the CWC, ANPAQ has an ongoing relationship with the Spanish industry because the country has a large chemical industry that uses many of the 3.400 products included in the CWC control lists.<sup>32</sup>

ANPAQ acts as the focal point for any issues regarding chemical dual-use exports and legal framework that companies may have. It is also the competent body to authorize certain labs to produce between 100g and 10kg (per year) of the chemical substances of the 1<sup>st</sup> Group (prohibited substances with little or no peaceful uses), as long as their production is addressed to research, medical or pharmaceutical uses.<sup>33</sup>

→ **LAVEMA**

LAVEMA stands for Verification Laboratory of La Marañosa. La Marañosa is a Technological Institute dependent of the Spanish Ministry of Defence that hosts the Verification Laboratory for chemical substances, one of the previously mentioned 19 OPCW-

---

31 *Real Decreto 663/1997, de 12 de mayo, por el que se regula la composición y funciones de la Autoridad Nacional para la Prohibición de las Armas Químicas; Ley 49/1999, de 20 de diciembre, sobre medidas de control de sustancias químicas susceptibles de desvío para la fabricación de armas químicas.*

32 More than 8000 Spanish companies have already been inspected by the OPCW staff.

33 If quantities are below 100g there is no need for an authorization or previous obligation to declare.



authorised verification labs in the world. This recognition makes it a prestigious centre, capable of offering tailored outreach programs at an international level.

Established in 1997, LAVEMA brings together official and labour staff of the Ministry of Defence and experienced consultants for the analysis of chemical compounds from ISDEFE (a public company owned by the Ministry of Defence that works as the in-house technical services provider for the Spanish Government).

While LAVEMA does not offer outreach programs regarding export controls, it is worth mentioning its importance, as it *does* offer outreach activities in the frame of prevention. LAVEMA offers capacity building trainings for public laboratories in Latin America and implements courses and workshops for the region.<sup>34</sup> These courses focus on LAVEMA's expertise and lessons learned regarding peaceful chemical research and sample analysis.<sup>35</sup> It raises awareness on the importance of dual-use goods, their potential threats, the need to follow codes of conduct during chemical research activities and the importance of complying with international legal frameworks.

### **2.2.2 PUBLIC ENTITIES OFFERING OUTREACH PROGRAMS FOR BIOLOGICAL DUAL-USE GOODS**

#### **→ CYTED (MINISTRY OF ECONOMY, INDUSTRY AND COMPETITIVITY)**

CYTED is the 'Ibero-American' Program of Science and Technology for Development. It was created in 1984 by the governments of some 'Ibero-American' countries to promote cooper-

---

34 OPCW, "4th Spanish Language Course on Analysis of Chemicals held in Spain", in *OPCW News*, 13th June 2014; OPCW, "Spanish-language Course on Analysis of Chemicals in the Framework of OPCW Proficiency Testing Opens in Madrid", in *OPCW News*, 25th May 2012.

35 Gómez, E., "El papel de los Proficiency Tests en la aplicación de las resoluciones de la OPAQ", in *El papel clave de la química en la seguridad nacional e internacional*, UCM, Lecture, 12 July 2016.

ation in science, technology and innovation for the harmonious development of the region.<sup>36</sup> CYTED is an intergovernmental actor with Spanish presence, and headquarters in Madrid. In 1995 it was formally included among the Cooperation Programs of the Ibero-American Summits of Heads of State and Government. Since Spain is the leader of some of the outreach projects offered by CYTED, it may be assimilated to an international assistance provider.

Among other projects that aim at strengthening technological development in 'Ibero-America' through knowledge management, technical cooperation, scientific exchanges and social programmes,<sup>37</sup> at this point it is worth focusing on the project "VIRORED". VIRORED is coordinated and implemented by Spain's Ministry of Economy, Industry and Competitiveness.<sup>38</sup> It aims at creating a laboratory network to improve and implement diagnosis capacities in 15 countries of 'Ibero-America'. As part of its work, Spain –through CYTED– raises awareness on the importance of codes of conduct, research control, the dual-use dilemma in biological research, and safety and security legal frameworks.<sup>39</sup>

CYTED achieves its objectives through different financing instruments that mobilize researchers and 'Ibero-American' experts, enabling them to train and generate joint research, development and innovation projects. Thus, the countries that make up CYTED foster an appropriate environment to keep up-to-date on the latest technological developments and the best policy and legal approaches.

---

36 CYTED, *Interinstitutional Framework Agreement*, 1984; signed by 21 'Ibero-American' countries.

37 Its work is structured in *Thematic Networks, Research Projects and Iberoeka Projects* [www.cyted.org](http://www.cyted.org).

38 Which is the Spanish National Authority taking part in CYTED and acting as the Spanish signatory to this initiative [www.cyted.org/en/VIRORED](http://www.cyted.org/en/VIRORED). VIRORED's goals: [http://virored-cyted.isciii.es/?page\\_id=10](http://virored-cyted.isciii.es/?page_id=10).

39 Since 1984 more than 28,000 researchers, experts and entrepreneurs have taken part in different programs offered by CYTED.

→ **ISCIII (INSTITUTO DE SALUD CARLOS III)**

ISCIII is the biological research centre of the public University Carlos III, in Madrid, and it serves as Spain's Public Health Institute. ISCIII reports directly to the Ministry of Economy and Competitiveness<sup>40</sup> and to the Ministry of Health, Social Services and Equality.<sup>41</sup> Its key mission is to support the development of scientific knowledge in the health sciences, to contribute to innovation in healthcare and guarantee the prevention of disease. However, given its research essence, it also does outreach to other research centres and public laboratories both in Spain and abroad.

At a national level, ISCIII collaborates and provides technical advice on the design of internationalisation policies for Spanish research centres in the health sciences field. It also designs strategies on establishing partnerships in coordination with the Ministry of Economy, Industry and Competitiveness. In this regard, it is Spain's leader in the implementation of European and international policies, as well as initiatives and programmes in the area of biomedical and health science research.

At an international level, ISCIII also participates in the previously mentioned VIRORED Project in Latin America and acts as the scientific branch of some European outreach projects. The most relevant currently is MediPIET, a project funded by the European Commission, linked to the EU CBRN Centres of Excellence initiative. This project develops and consolidates the building blocks and framework of a training program in the Mediterranean region.

---

40 *Royal Decree 345/2012.*

41 *Only in operational terms. Royal Decree 200/2012.*

ISCIH's National Centre for Epidemiology hosts the office to the MediPIET Project Team in Madrid which serves as the scientific branch of the leading consortium.<sup>42</sup>

### 2.2.3 PUBLIC ENTITIES OFFERING OUTREACH PROGRAMS FOR NUCLEAR DUAL-USE GOODS

#### → CSN (CONSEJO DE SEGURIDAD NUCLEAR)

The Spanish Nuclear Safety Council (CSN) is the only Spanish authority in charge of nuclear safety and radiation protection issues. The CSN is governed by public law<sup>43</sup> and by its Statutes.<sup>44</sup> The first articles of both texts establish the CSN's own legal personality and assets. Although the CSN is independent from the central government, it is accountable to the Congress of Deputies and the Senate. This requirement makes the authority's work much more transparent.

The CSN's mission is to ensure that Spanish nuclear facilities are operated safely in order to protect the population and the environment from the potential harmful effects of ionising radiation. Its outreach programme is addressed to private industries and public administration, but it also undertakes certain international activities

---

42 MediPIET is a project led by the consortium FIAPP-ISCIH, with the scientific leadership of ECDC (European Centre for Disease Prevention and Control –the European Commission's specialized agency established in 2005 to strengthen Europe's defences against infectious diseases), which has been running since 2014 and until 2017. The full title of the project is: *'Further Development and Consolidation of the Mediterranean Programme for Intervention Epidemiology Training (MediPIET)'*, CBRN CoE Project 36. It is a continuation of a previous project led by ECDC (CBRN CoE Project 32) that established the foundations of the training programme by defining its structure, contents and curriculum and put in place the main elements of the MediPIET network throughout the Mediterranean. ECDC hosts one of MediPIET's Scientific Coordinators in its premises in Stockholm.

43 Law on the creation of the NSC. *Ley 15-1980, de 22 de abril, texto consolidado 8 de noviembre 2007.*

44 *Real Decreto 1440/2010, de 5 de noviembre por el que se aprueba el Estatuto del Consejo de Seguridad Nuclear.*

especially in the sphere of multilateral relations within steering bodies, advisory committees and technical working groups like the IAEA, the EU or the OCDE's NEA.

The CSN plays a role in Spain's compliance with its commitments under international conventions concerning areas within its remit. At a national level, it is in charge of ensuring the correct implementation of the Commission's proposal regarding any aspect related to nuclear dual-use goods exports. Also, due to its active participation in many international associations made up of peer institutions,<sup>45</sup> it has a clearing house effect regarding new practices and regulatory policies. It advises the Spanish government about its commitments to other countries and entities in this field.

At an international level, the CSN maintains official relations with similar foreign organisations. These activities occur either multilaterally (through international organisations, institutions or forums) or bilaterally (via technical cooperation and collaboration agreements with peer authorities).<sup>46</sup> In both cases, there is a relatively common pattern of addressing these outreach activities to Spanish-speaking countries, creating synergies among entities that may improve knowledge and foster the training of specialists in the nuclear field. This cooperation promotes the exchange of views on regulatory policies among senior representatives and specialists.

---

45 The International Nuclear Regulators' Association (INRA), the Ibero-American Forum of Radiological and Nuclear Regulatory Agencies, the Western European Nuclear Regulators Association (WENRA), the European Nuclear Security Regulators Association (ENSRA), etc.

46 For instance, the CSN is part of the Ibero-American Forum of Radiological and Nuclear Organs (*Foro Iberoamericano de Organismos Radiológicos y Nucleares*), which was created in 1997 as an association to contribute to safe and peaceful cooperation in the field of nuclear energy in the Ibero-American Region. In this FORO, within the section "Knowledge Management", the CSN interacts with different national authorities to exchange good practices, identify common concerns and ways to solve them. They put efforts together to keep nuclear practices and knowledge safe through shared standards.

### 2.3. **Private entities offering outreach programs for general 2ug exports**

Offering outreach activities may imply receiving income for certain types of private companies. Entities like law firms or consultancy agencies, which are already specialised in the legal aspects of export controls, have found an opportunity to expand their businesses by providing outreach programmes to new customers.

In the current Spanish landscape, AROLA is one of the leading companies in terms of legal consultancy in the international trade management field. They offer advice on customs, logistics, export controls, sanctions and trade remedies such as excise duties and safeguards. Their services assist clients to comply with international trade and customs regulations.<sup>47</sup>

Training, according to these companies, is a key element to fulfil the client's objectives, mainly fostering their trade relations and expanding their markets. For that reason, AROLA offers tailored courses which are adapted to the client's needs; informative workshops on export control regulations; and training sessions to solve queries about customs and international trade. As part of the European network of customs and trade law firms *Green Lane*, AROLA also offers its clients a periodic service informing them on any updates regarding EU laws as well as national laws implementing supranational regulation.<sup>48</sup>

The main addressees of AROLA outreach programs are its clients: Spanish companies (as the beneficiaries of these activities) that wish to benefit from the experience and knowledge of the team of experts to promote their competitiveness and economic development, and in exchange, they pay for the service they are being granted.

---

47 [www.arola.es/formacion](http://www.arola.es/formacion).

48 Green Lane is the Alliance of European Customs and Trade Law Firms [www.greenlane.eu](http://www.greenlane.eu).

The interconnection between law firms or private companies offering outreach activities, and industries in need of counselling is increasingly more common. The fact that 80% of innovative defence artefacts (robotics, miniaturization, autonomous systems) come from private companies<sup>49</sup> gives us an idea of the ever growing importance of the private sector on both sides of outreach programmes. It may be worth rethinking whether a private approach to outreach may be desirable and what could be the most suitable way to put it in place.

### 3. CLOSING REMARKS

The new policy outline resulting from the junction of the Global Strategy for Security and the recast of the EU dual-use regulation (which most definitely will undergo several modifications) would require that the competent authorities in Member States provide guidance for exporters, brokers, transit operators and other stakeholders to ensure the efficiency of EU export control regimes and consistency in its implementation.

Spain's position towards this newly defined legislation is proactive. Public authorities are in favour of any step taken towards deeper cohesion among EU Member States.

In relation to the recast of the EU dual-use legislation, the idea of *outreach* is present throughout many Spanish Laws, and Spain relies on the participation of various authorities and institutions that already offer some kind of outreach programme at both national and international levels. From these previously analysed outreach programs, three characteristics may be inferred, each of them with a subsequent lesson:

---

49 Lehofer, Wolfgang, "Incentives of non-proliferation outreach activities: actors and rationale", Address at the *Seventh meeting of the Chaudfontaine Group*, Chaudfontaine, January 2017.

1. Many of the outreach projects implemented by Spanish actors in the field of dual-use goods do not focus exclusively on dual-use export controls, but rather on the source of the potential risk. This way they seem to have their attention more set on laboratory codes of conduct, threat reduction, waste management, emergency preparedness and other urgent issues linked to the use of sensitive materials. Thus, the approach taken by Spanish authorities is rather comprehensive, and even if it is polyvalent within the characteristics of each partner country, it does not address the issue exclusively from a trade perspective. Therefore, in order to comply with new obligations in terms of dual-use export controls, Spanish outreach activities will have to be explored to reach its full potential. Nevertheless, Spain's method of controlling dual-use goods at an earlier stage may be a suitable way to ease the process of controlling dual-use exports: by the time these items reach customs officials, they will have been monitored from their production in a laboratory or factory. This kind of outreach operation may be a fit complement to the several institutions offering outreach activities in the field of dual-use trade controls.
2. To date, focus on Latin America seems to have been a constant in the majority of international outreach projects implemented by Spanish entities, mainly due to the benefits of sharing a common language and the many similar cultural references among countries. Spain's experience proves that the peer-to-peer approach with States who enjoy fluid interpersonal and interinstitutional ties does work and that it tends to be replicated. Nevertheless, this focus might be slightly shifting since institutions such as FIIAPP or ISCIII are getting more involved in the EU CBRN CoE initiative and, therefore, exploring other regions like the Mediterranean or South-East Asia.
3. Since there is no national policy regarding outreach programs in the field of dual-use export controls, no authority is respon-



sible for coordinating all national contributions to those programs. The establishment of a coordinating body that could gather all Spanish institutions involved in outreach activities under the same umbrella would avoid duplications, institutionalize updates of the programs, facilitate the contact among peer authorities and enhance current efforts. However, given Spain's territorial organization into Autonomous Communities, it would be worth considering another institutional structure as long as it has very clearly demarcated functions and unambiguous attributions to the various regional bodies.



# Human Security and Outreach Programmes: The Recast of the EU Dual Use Legislation from an Italian perspective

Giuseppina Squillaci

*International Projects Executive at Associazione Diplomatici*

## 1. INTRODUCTION

When it comes to dealing with the global non-proliferation regime as a whole, it becomes consequently quite natural to compare it with a kind of *Pandora's box*.<sup>1</sup> Indeed, the issue of non-proliferation of weapons of mass destruction has so many ramifications that grasping it in its entirety would be nearly impossible. Non-proliferation issues require an analysis of all political, institutional, economic, national, and strategic considerations involved in the domain; moreover, one should not underestimate that the topic, as a global threat, has to be examined through the lens of the existing international law instruments that shape the so-called global non-proliferation regime.

In the light of the above, the Seventh meeting of the Chaudfontaine Group on “Incentives of non-proliferation outreach activities: actors and rationale” paved the way for a deep analysis of the extent to which the global non-proliferation regime has changed since 2015,<sup>2</sup> and whether the new policy

---

1 At this regards, see Squillaci, G., “Searching for the EU and US doctrines vis-à-vis the proliferation of WMD: the comparative analysis of the Indian and Iranian cases”, Master Thesis with the Supervision of Dr. Pr. Quentin Michel, 2015. Available at <http://www.esu.ulg.ac.be/index.php?serv=49&cat=3>.

2 See footnote 1 above.

measures, such as the new 2016 *European Global Strategy*<sup>3</sup> (from now on EUGS) and the European Commission 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 –the recast of the Dual Use Regulation (from now on DU Regulation)– could effectively be the *turning point* of what has been defined a *proliferation conundrum*.

As stated in the European Global Strategy, the non-proliferation of weapons of mass destruction remains a *growing threat*<sup>4</sup>. Indeed, neither Member States nor the EU as a single actor can deal with these key current changes and challenges without a multilateral approach. However, instead of nourishing a mere hope to establish an “effective multilateral system”,<sup>5</sup> as expressed in both the European Security Strategy (ESS) and the EU strategy against proliferation of weapons of mass destruction (EU WMDs Strategy) in 2003, the current position is to adopt a *principled pragmatism*<sup>6</sup> to tackle realpolitik issues with a multi-dimensional, multi-phased, multi-level and multi-lateral approach.<sup>7</sup>

By adopting a more specific perspective, it is in this wide context that the EU recognised the need to modernise its strategy in order to achieve, *inter alia*, a *political economy of peace*<sup>8</sup> whereby the policy on export control for dual-use goods also needs a recast. Therefore, what should the lowest common denominator of international trade and foreign policy be? For sure, there is

---

3 “Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union’s Foreign And Security Policy”, June 2016. Available at [http://europa.eu/globalstrategy/sites/globalstrategy/files/regions/files/eugs\\_review\\_web.pdf](http://europa.eu/globalstrategy/sites/globalstrategy/files/regions/files/eugs_review_web.pdf).

4 European Global Strategy, p. 41.

5 European Council, “A Secure Europe in a Better World: European Security Strategy”, Brussels, 12 December 2003, p. 14. Council of The European Union, EU Strategy against Proliferation of Weapons of Mass Destruction, 15708/03, Brussels, 10 December 2003, p. 6.

6 European Global Strategy, p. 16.

7 *Ibid*, pp. 28-29.

8 *Ibid*, p. 31.

the need to insert the notion of ‘human security’, and indirectly, the respect of Human Rights, no longer as a mere rhetorical exercise,<sup>9</sup> or as a mechanism that may eventually circumvent international or European normative framework for the sake of *essential security interests*.<sup>10</sup> But rather, they should be an issue of utmost importance for the stability of the EU, its Member States and the whole world.

## **2. THE NEW POLICY FRAMEWORK FOR A RECAST OF THE EU DUAL USE TRADE LEGISLATION**

### **2.1. The EU Global Strategy**

The fact that “proliferation may be contained through export controls measures”<sup>11</sup> or that “export controls regimes”, alongside political and diplomatic measures “form the first line of (European) defence”<sup>12</sup> was already stated in 2003 in the ESS and the EU WMDs Strategy. What is new, therefore, is the EU’s first-hand commitment to actively working to fulfil that goal:

The EU will actively participate in export control regimes, strengthen common rules governing Member States’ export policies of military – including dual-use – equipment and technologies, and support export control authorities in third countries and technical bodies that sustain arms control regimes. (EUGS, p. 42)

---

9 As in the case of the 2003 ESS and EU WMDs Strategy.

10 Squillaci G., “The US ‘Conflict Minerals’ Law: Is there an indirect sanctioning mechanism?”, in Quentin Michel, Odette Jankowitsch-Prevor, and Sylvain Paile-Calvo (Eds), *Controlling the trade of strategic goods. Sanctions and penalties*, European Studies Unit, August 2016, Chapter 7, p. 159.

11 European Security Strategy, 2003, p. 7.

12 Council of The European Union, EU Strategy against Proliferation of Weapons of Mass Destruction, 15708/03, Brussels, 10 December 2003, p. 5.

Theoretically, the EU will engage in non-proliferation affairs in a more complex, connected, and contested world<sup>13</sup> as a responsible global power<sup>14</sup> and no longer as a mere civilian actor or “military dwarf”<sup>15</sup>. This stems from the recognition that “EU foreign policy is not a solo performance: it is an orchestra which plays from the same score”.<sup>16</sup> Indeed, even if the EU Global Strategy seems to be more focused on the “D” of the CSDP<sup>17</sup>, rather than on a strong recast of the export control regime, the main issues highlighted in the above mentioned document pave the way for a more credible, responsive and joined-up<sup>18</sup> Union, where human security will be fostered as a top priority to tackle conflicts and crises through an integrated approach. Therefore, the whole export regime will only get stronger. For the sake of the clarity, some of the main areas addressed in the Global Strategy are as follows:

1. Central role of the CSDP: the willingness to establish EU “hard power” is affirmed for the first time, operating hand in hand with the longstanding soft one.
2. Clear level of ambition: the EU is committed to performing collectively at global level but, again, for the first time ever, “to act autonomously if and when necessary” (unilateralism alongside multilateralism) by resolutely gaining strategic autonomy.

---

13 European Global Strategy, p. 8.

14 *Ibid*, p. 18.

15 Sauer T., The “Americanization” of the EU Nuclear-proliferation Policy, Defense and Security Analysis, 2004, 20(2), p. 114.

16 European Global Strategy, p. 47.

17 Legrand J., *Does the new EU Global Strategy deliver on security and defence?*, European Parliament, Directorate-General For External Policies Policy Department, DGEXPO/B/PolDep/Note/2016\_243, September 2016, p. 4.

18 European Global Strategy, p. 11.

3. EU-NATO cooperation will be strengthened even if their relation shall not prejudice the security and defence policy of those Member States that are not part of NATO. The EU, indeed, wants to reinforce the European pillar of NATO.
4. Among the priorities of the external action, the achievement of a *Political Economy of Peace* could be the prerequisite to recast the export control regime in a way that, more than simply preserving the status-quo, aims at transforming it: “The EU is committed to a global order based on international law, including the principles of the UN Charter. This commitment translates into an aspiration to transform rather than simply preserve the existing system”.<sup>19</sup>

Although the tools to make the dream become reality are not properly established, the EUGS commits to draw follow-up mechanisms that will lead to an actual implementation of the global strategy (e.g. sectorial strategy, review mechanism).<sup>20</sup>

## 2.2. **The EU COM Proposal to recast the DU Regulation**

The integrated approach to tackle crises and conflicts will be driven by a “human security” focus, and it should also refer to the domain of export control. Thus, the nexus between the respect of human rights and the freedom to conduct business (in a competitive way) must be strengthened. Indeed, through the 2016 COM Proposal to recast the DU regulation, the EU is committed to making the regime more efficient, more consistent and more effective above all by prescribing measures on certain cyber-surveillance technologies that have resulted in high human rights violations. As a matter of fact,

---

19 European Global Strategy, p. 10.

20 Legrand J., p. 15.

“there have been numerous reports of cyber-surveillance –technologies being exported to repressive regimes and/or into conflict areas and misused for internal repression to infiltrate computer systems of dissidents and human rights activists, at times resulting in their imprisonment or even death”.<sup>21</sup>

Therefore, by adding an authorisation system controlling specific cyber-surveillance technologies<sup>22</sup>, the legislative proposal will be able to provide an effective response to human rights threats derived from their uncontrolled export.

Beyond the cyber-surveillance technologies focus, throughout the whole text, respect of human rights and international law, both at European and international level, is reiterated and underlined. It is worth noting that *human security* appears as the *sine qua non-condition* to comply with the obligations of the regulation.

### 2.3. **The Italian response to the new policy framework**

The EUGS would not have been possible without Nathalie Tocci’s inspiring thinking<sup>23</sup>. Tocci (Deputy Director of Istituto Affari Internazionali and Special Advisor to the High Representative /Vice President Federica Mogherini) has insisted on the adoption of the EUGS and, for this purpose, the Istituto Affari Internazionali (IAI) in cooperation with the Barcelona Centre for International Affairs (CIDOB) has launched a work-

---

21 European Commission, “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”, COM(2016) 616 final, 2016/0295 (COD), Brussels, 28 September 2016, p. 6.

22 European Commission, 28 September 2016, p. 9.

23 European Global Strategy, p. 56.



shop, entitled “the Mercator European Dialogue”, focused on the implementation of the EU Global Strategy (organised on 11-12 December 2016). The aim of the workshop was to create a room for dialogue with EU and national officials involved in the implementation of EUGS<sup>24</sup>.

Concerning the 2016 COM Proposal for a recast of the dual-use regulation, Italy has not been as responsive as other Member States. It must be noted that Italy has already had some difficulties and delays as regards the implementation of the (EC) No. 428/2009, as showed by the most recent “Information note on measures adopted by Member States in conformity with Articles 5, 6, 8, 9, 10, 17 and 22”<sup>25</sup>, issued on 20 August 2016. However, as announced in the Ministry of Economic Development’s website<sup>26</sup>, the Legislative Decree No. 96 of April 2003, the main Italian legislative reference on dual-use controls, is undergoing an amendment process. Indeed, the legislator is now trying to re-organise and systematise the matter (Delegated Law no. 170/2016). The aim is to make Italian legislation more coherent and functional to EU dual-use regulation obligations. The Government is supposed to issue the new legislation by 16th September 2017, but at present there are no developments on the matter.

Therefore, as regards the 2016 COM Proposal, Italy has not intervened much. However, the Ministry of the Economic Development - Department for enterprise and internationalization, highlights that Italy welcomes the DU Regulation Recast especially because it seems to take into account the needs/

---

24 To deepen in knowledge, <http://www.iai.it/it/eventi/implementing-eu-global-strategy>.

25 The document is available at: [http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154880.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154880.pdf).

26 Italian Government, Ministry of Economic Development. <http://www.mise.gov.it/index.php/it/commercio-internazionale/import-export/dual-use>.

demands of EU exporters. Nevertheless, the government reserves the right to express an explicit judgement only when the recast is adopted.<sup>27</sup>

If we consider outreach activities towards Italian companies, it appears that there is still a lack of awareness on the importance of dual-use controls in Italian companies' business. On the one hand, it can be noted that the Ministry of Economic Development does not own the economic resources to answer the companies' doubts on the application of the Regulation 428/2009; indeed, roughly only 20 people are working on this issue at the Ministry level, in comparison, for instance, with German competent authority (German Federal Office of Economics and Export Control – BAFA) with its roughly 620 employees. Therefore, substitute subjects for developing outreach activities are industrial associations (like Confindustria) or boutique law firms have organised many public conferences to raise awareness on dual-use export controls in the last few years. These private associations supporting public authorities have also organised trainings, in-house formation, oversight and monitoring programmes. As regards the 2016 COM Proposal, a public event on the EU reform to recast dual-use regulation was held in November 2016,<sup>28</sup> with the presence of experts from the Italian Ministry of Economic Development, the Office of Non-proliferation and Treaty Compliance- Bureau of Industry and Security- U.S. Department of Commerce, as well as members coming from industrial associations and law firms, and compliance officers, in order to discuss the content and impact of the proposal, in an interactive way. Thus, the dialogue between public and private stakeholders has been launched on that occasion.

---

27 Data obtained from mail exchanges with officials of the Ministry of Economic Development, on 20th January 2017.

28 [http://info.amberroad.com/Amber-Road-Seminar---Mailand-Nov-2016\\_Home-Page-2.html](http://info.amberroad.com/Amber-Road-Seminar---Mailand-Nov-2016_Home-Page-2.html).

### 3. THE EUROPEAN P2P DUAL USE PROGRAMME: AN EXAMPLE OF BEST PRACTICES

Since 2004, as a result of the UNSCR 1540<sup>29</sup>, the so-called Outreach Programmes on dual-use export control have been launched to assist third countries in establishing well-functioning export control systems. These projects contribute to fight against the proliferation of weapons of mass destruction and related materials, equipment and technologies.

Currently, the EU Outreach Programmes on dual-use, renamed EU P2P Dual-Use Programme in 2014<sup>30</sup>, seem to have gained more ground in the global arena. Indeed, not only the new policy framework of reference, i.e. the EUGS and the COM Proposal on DU legislation recast, has contributed to increasingly enhancing their development worldwide, but also, and perhaps more importantly, these projects perfectly match the need to foster “human security” and to export “EU best practices”<sup>31</sup> internationally. In the same vein, the P2P DU Programme also provides the concrete tools to the EUGS willingness to “sharpen the means to protect and empower civic actors”.<sup>32</sup> Indeed, by strengthening export control system abroad according to the specific needs and priorities of the countries concerned, outreach programmes finally give the means to the population to stand under their own steam. Empowerment of the population is the key of these kind of projects: rather than bringing them the solution in a top-down manner, they choose to adopt bottom-up

---

29 United Nations, UN Security Council Resolution 1540, S/RES/1540 (2004), 28 April 2004.

30 To deepen, please consult the following website: <https://export-control.jrc.ec.europa.eu>.

31 Worth mentioning, the term *best practices* has been used in the EC Proposal for a Recast of the DU Regulation in Art. 24 in the framework of chapter VII, namely Transparency, Outreach, Monitoring, Evaluation. It becomes interesting to note the connection between outreach activities and the spread of best practices.

32 European Global Strategy, p. 43.

and tailor-made approaches where, gradually, the beneficiaries can learn how to proceed. Metaphorically, the EU P2P DU programmes teach people how to fish rather than simply giving them the fish.

By coming back to the “best practices” perspective, art. 24 of the COM DU proposal states that “the COM and the Council shall, where appropriate, make guidance and/or recommendations available with best practices for the subjects referred to in this Regulation”<sup>33</sup>. P2P Programmes are the perfect example of a way to ensure the enforcement of the regulation itself and, as a consequence, to strengthen the whole export control system. Indeed, as expressed in the recital 25, “outreach to the private sector and transparency are essential elements for an effective export control regime”<sup>34</sup>.

As far as the legal framework is concerned, the EU P2P Export Control programme is managed by the European Commission’s Directorate General (DG) for International Cooperation and Development (DEVCO), with support from the European External Action Service (EEAS), under the Instrument contributing to Stability and Peace (IcSP) long term programme. It is further implemented by the EU Chemical, Biological, Radiological and Nuclear Centres of Excellence Risk Mitigation Initiative (CBRN CoE).

As reported in the official website, at the moment the EU’s cooperation programme on export control counts 32 countries from 6 regions.

As far as the actors are concerned, dealing with P2P dual-use programmes means dealing with a number of EU Member States agencies. Currently, three projects are in an implementation phase:

1. The first two (Global and South East Asia) are carried out by a consortium led by Expertise France plus the Export Control

---

33 European Commission, 28 September 2016, p. 41.

34 *Ibid*, p.17.

Office on Dual-Use Goods (SBDU), King's College London, the Swedish Inspectorate of Strategic Products, the Customs authorities of France and Belgium, the United Kingdom National Nuclear Laboratory and the University of Liège.

2. The third one is on export control outreach for dual-use items for Jordan and Kazakhstan, implemented by the German Export Licensing Agency (BAFA).

Therefore, these projects involve approximately 200 experts with diverse professional backgrounds from across the European Union offering their technical expertise to EU P2P activities. Moreover, international partners, not just EU MS agencies, contribute to outreach projects. For instance, the US Department of State's Export Control and Related Border Security Programme<sup>35</sup> (EXBS) has offered its collaboration to outreach activities several times, such as during a workshop organised in Dubai on 30 August 2015 on the development of strategic trade controls in the Gulf Cooperation Council (GCC) Countries – an industry outreach event and regional workshop hosted by the Government of the United Arab Emirates.<sup>36</sup>

Regarding the rationale at the core of P2P dual-use programmes, the general aim is to facilitate long-term cooperation in the field of strategic trade control. In order to achieve that, the experts organise a cycle of visits with the final aim of enabling third country beneficiaries to develop a high level of maturity in their export control system. Indeed, the initial visit is always conceived to enable experts to draft a country road map that will act as a sort of “legal basis” to develop a tailor-made Strategic Trade Control Model to follow throughout the P2P programme. Then, the Strategic Trade Control Enforcement (STCE) Model

---

35 To consult the official website: <https://www.state.gov/t/isn/ecc/c27911.htm>.

36 EU-Outreach Newsletter, July 2015, p. 4. Available at: [https://exportcontrol.jrc.ec.europa.eu/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core\\_Download&EntryId=856&language=enGB&PortalId=0&TabId=98](https://exportcontrol.jrc.ec.europa.eu/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=856&language=enGB&PortalId=0&TabId=98).

is divided into four levels of maturity, starting from an “unsupported” status that basically means a total lack of prerequisites to establish a STCE model, to an “enabled” status, in which the model will effectively work. The middle phases would be a “nascent” and “established” system<sup>37</sup>.

All things considered, since the consortium experts’ primary aim is to establish long-term cooperation and durable solutions, the development of a European Union Common Training Toolkit (EUCOTT) can be considered a tangible outcome of these projects. These consortium experts are also supported by a European Roster of Experts (EROES) committed to spreading the culture of outreach throughout Europe. Among the activities provided, there is the need to increase awareness among Government officials, the industry and research community as regards the understanding of proliferation mechanisms and the ways to fight it, as well as the need to improve their implementation and enforcement capabilities to deal with trade control legal and regulatory framework.

---

37 All information has been extracted from the EU P2P Export Control Programme official website: <https://export-control.jrc.ec.europa.eu/>  
<https://export-control.jrc.ec.europa.eu/News/ArtMID/481/ArticleID/257/EU-Outreach-Programme-in-Dual-Use-Export-Controls-New-Implementer>.

## **4. THE EUROPEAN P2P DUAL USE PROGRAMME: AN EXAMPLE OF BEST PRACTICES**

Unfortunately, at present, the Italian cooperation and/or contribution in the P2P programme domain remains all but clearly manifested.

It could be interesting to note that, the EU Commission Joint Research Centre (JRC), located in Ispra, Italy, represents, by means of its Strategic Export Control Project within the Nuclear Security Unit, an important support on the implementation of the various P2P projects by providing technical advice and support to ensure the success of the programme. By working closely the European Commission's Directorate General for International Cooperation and Development (DG DEVCO), the JRC Strategic Export Control Project provides direct technical and analytical support to harmonize the implementation of the EU Dual-use Regulation (e.g. extensive research, training and policy review on dual-use export control regulatory system)<sup>38</sup>. Needless to say, the JRC remains an EU institution but it is still reasonable to say, given its geographical position, Italy is contributing in a certain sense to the fulfilment of P2P dual-use programmes.

From a strictly governmental perspective, the Ministry for the Economic Development - Department for enterprise and internationalization, which is the Italian competent authority for dual-use export control implementation, has collaborated with outreach programmes initiatives, after their re-denomination in P2P programmes, in just two occasions:

1. The "Train-the-Trainer Seminar" held in Paris in April 2016;
2. First Training Session in Algeria, May 2016.

---

38 EU P2P Newsletter, Issue 2, p. 7. Available at: [https://exportcontrol.jrc.ec.europa.eu/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core\\_Download&EntryId=2099&language=enGB&PortalId=0&TabId=98](https://exportcontrol.jrc.ec.europa.eu/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=2099&language=enGB&PortalId=0&TabId=98).

Previously, Italy participated in the former EU Cooperation Export Controls of Dual-Use Goods and Long Term Programme (LTP): the Ministry highlighted its collaboration in Moroccan missions and also through a study visit in Rome, in collaboration with BAFA, which was addressed to Chinese custom officials (23-25 November 2011) in the framework of the LTP.

#### 4.1. **The “Train-the-Trainer Seminar”**

Held in Paris on 16-18 March 2016, its purpose was to introduce the European Roster of Experts (EROES) to the implementing consortium’s approach and training materials. A secondary purpose was to validate the training materials by gathering feedback on the materials from the experts.

Among the topic scheduled featured Licencing Process, Trends in Illicit Trade, Transit and Transshipment, Intangible Technology Controls and Catchall Controls.

#### 4.2. **First Training Session in Algeria<sup>39</sup>**

On the occasion of the training session in Algeria, the Italian Ministry joined the consortium of the European Union P2P Project on Dual-Use Goods, in coordination with the Algerian National CBRN Team and the National Focal Point. With the support of the Regional Secretariat of the EU Centres of Excellence for North Africa and Sahel, the Italian Ministry took part in a workshop on chemical, biological, radioactive and nuclear (CBRN) dual-use goods trade control on 8-12 May 2016 in Algiers. Concerning the focus

---

39 EU P2P Newsletter, Issue 3, p. 16. Available at [https://exportcontrol.jrc.ec.europa.eu/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core\\_Download&EntryId=2597&language=enGB&PortalId=0&TabId=98](https://exportcontrol.jrc.ec.europa.eu/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=2597&language=enGB&PortalId=0&TabId=98).



of the meeting, nine modules were selected from the European Common Training Toolkit (ECOTT) and presented during the event:

1. non-proliferation and trade controls,
2. control lists,
3. “catch-all” controls,
4. interdiction,
5. intangible technology transfers,
6. licencing process,
7. dual-use goods identification from a customs perspective,
8. customs process,
9. and an interagency cooperation exercise.

The Italian contribution focused more on control lists, “catch-all” controls, intangible technology transfers and licensing process. All modules were dealt with a mixture of theoretical presentations and practical exercises.

The outcome of the meeting was really positive, especially considering the international sanctions imposed on such CBRN materials and recent developments in the region. Algerian partners expressed their will to promote the importance of effective controls on the trade of dual-use items at the national level, with a view to ensuring national regional and international security, and to continue working with the European Union to reach this purpose.

To conclude, direct contact with the Italian Ministry clarified that, so far, the Italian administration has not created an ad-hoc website concerning its participation to P2P projects also because it has participated in just one occasion.

Taking the above into account, it is imperative to highlight that the Italian contribution to outreach activities to third countries has been related only to the P2P collaboration framework. Therefore, outside the international scenario, no national outreach programmes have been implemented so far.

## 5. LOOKING AHEAD

Looking at the future, a couple of reflections could be drawn:

Firstly, regarding the EUGS, all considerations will depend on the practical implementation of the Strategy. It shall be checked whether the document will remain a mere list of proposals, or a pragmatic way of direction. At present, factual preconditions to make the difference exist, but since many policies areas remain upon Member States' prerogatives, e.g. defence, it will be up to their willingness to develop a real "common action".

Secondly, concerning the COM proposal to recast the dual-use regulation, if it becomes official, the rationale could be almost the same. Throughout the document, there are effective mechanisms to strengthen export control in a way primarily aimed at preserving human security. But, again, the Member States' role in enforcement and implementation will determine the concrete "success" of the regulation.

Thirdly, the P2P dual-use programme will remain an essential element to enhance a regulatory strategic control system worldwide, as long as there is the willingness to invest on it. The concrete enforcement of the EUGS and the COM dual-use regulation proposals could definitely provide a sustainable basis for that.

Last but not least, considering the Italian position on this policy framework, a long path lies ahead for the country to strongly contribute to the effectiveness of the system. Indeed, even if the national contribution to the international P2P framework has produced the desired results, cooperation could never be sufficient to actively strengthen the outreach dual-use projects, and as a consequence, the whole strategic export control system. As a matter of fact, cooperation has to become a national initiative in order to make a difference: national outreach programmes, therefore, have to be implemented and integrated into international ones.

# Capacity building, Croatia and South East European Region in the Recast of EU Dual-Use Regulation 2015/2017 context

Ivana Gengler-Mićić

At a time of new developments on the EU level, such as the new Global Strategy on Foreign and Security Policy (EUGS) and the European Council and Commission's proposal to Recast the EU dual-use regulation, Croatia<sup>1</sup> has a particular role to play in the context of capacity building. This contribution will focus more on the capacity building / outreach angle (within Croatia but also in its role as a capacity building provider) rather than on the Recast.

## 1. CAPACITY BUILDING IN THE EU DUAL-USE REGULATION RECAST CONTEXT...

### 1.1. ...in South East Europe

The 2015/2017 Recast of the EU Dual-Use Regulation will have a major impact upon the "Outreach" / capacity building / cooperation programmes<sup>2</sup> with third countries in the South Eastern European region. Indeed, these potential candidate (Bosnia and Herzegovina and Kosovo<sup>\*3</sup>) and candidate countries (Albania, the

---

1 The author would like to thank the Croatian officials and in particular Ms Vesna Focht in their support writing this article.

2 Various terms are used and the author will use capacity building in this article.

3 \*This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

former Yugoslav Republic of Macedonia, Montenegro and Serbia) to the EU will have to update their legislation according to changes in the EU regulation once adopted. It is important for the EU to support them, as the EU's new Global Strategy also highlights the importance of continuing to support this region in its path towards the EU<sup>4</sup>. The adoption of the Recast Dual-Use Regulation in 2009 had an impact on the SEE countries at the time: while developing or enhancing their export control systems they all had to update their laws to be in line with the new EU standards, as Croatia did it. Indeed as already highlighted: "The EU 428/2009 Recast Regulation was adopted one year after the revised Croatian Act on Export of Dual-Use Goods adopted in 2008. However, the amended Croatian law is in line with the Recast Regulation. One reason for this is the participation of Croatia in EU projects in the field of dual-use export control since 2005. Thanks to this early involvement, Croatian officials drafting the amendments received support from EU legal advisors who were aware of the discussions held on the EU level. Croatia decided to integrate changes and pass the law before the adoption of the Recast Regulation, considering that the remaining discussion at the time was not applicable to non-member States<sup>5</sup>". The particularity of these countries is that once the countries accede to the EU and the common market (as Croatia has recently done), they become responsible not only for controlling their exports by implementing the EU Dual-Use Regulation, but also for enforc-

---

4 « EU policy towards the candidate countries will continue to be based on a clear, strict and fair accession process. It will focus on fundamental requirements for membership first and feature greater scrutiny of reforms, clearer reform requirements, and feedback from the European Commission and Member States, as well as local civil societies. At the same time, EU support for and cooperation with these countries must deliver concrete benefits today, and must be communicated well. This means cooperating European Union Global Strategy on counter-terrorism, security sector reform, migration, infrastructure, energy and climate, deepening people-to-people contacts, and retailoring some of the EU's assistance with the aim of visibly improving citizens' wellbeing. » see <http://europa.eu/globalstrategy/en/global-strategy-foreign-and-security-policy-european-union>.

5 Micic, I., 'Croatia' in Michel, Q. (ed.) 'Sensitive Trade: The Perspective of European States', Non- proliferation vol. 5 (Peter Lang: Brussels, 2011).

ing the export decisions of other EU Member States if goods exit through their external borders. Therefore, it is important for the EU that SEE countries enforce their export controls, and SEE countries in their path towards the EU and in order to fulfil the EU *acquis* must constantly adjust their dual-use trade control systems and laws to the EU updates.

With the new Recast, SEE countries' officials should be made aware of the discussion and potential changes as it will also require them to introduce further changes. Keeping them updated and having an opportunity to follow the debate will give them a better understanding and more ownership; why and how one issue is important and what is the core of the discussion and why. It can be only positive for SEE officials to follow the Recast debate and not to feel they are kept in the dark and "asked" to update laws without understanding why. After more than 10 years of EU support in the SEE States in establishment or enhancement of the strategic trade controls systems, the change of the EU programme name from EU Outreach to EUP2P (EU Partner-to-partner Export Control Programme<sup>6</sup>) is seen as very positive, as the emphasis should be on "cooperation" and "peer to peer approach" rather than "outreach"; the change also better reflects reality.

Once the Recast is finalised, in addition to the adoption of the new laws, the implementation and enforcement will be highly important for the SEE countries. After the introduction of legal changes, the enhancement of administrative capacities will need to be supported by practitioners from EU Member States. One should keep in mind that not all provisions from the EU Dual-Use Regulation are implementable by the EU accession States as some provisions are specific to the EU and EU MS. The purpose

---

6 Today the EUP2P Export Control Programme for Dual—Use Goods which is in 2015-2017 implemented by Consortium led by France Expertise – see <https://export-control.jrc.ec.europa.eu/Home/Dual-use-trade-control> - this programme is the follow up one of 2005/2006 implemented by SIPRI and then from 2006 to 2015 by BAFA (see below).

and logic is not to ‘copy-paste’ the provisions as drafted in the EU Regulation, but to make sure that those drafted in the national law are understood, implementable and that they can be properly enforced by all institutions involved. Therefore, it is important to highlight the significance of the EU cooperation programme with the region and the flexibility needed to adapt to the different regional needs – in this particular case for the SEE accession States.

Another major donor very active in the SEE region in the field of strictly “dual-use” trade controls (excluding military/conventional arms trade controls) is the US Export Control and Border Security Program (EXBS). EXBS supports a variety of activities and also tailor makes its activities to the countries’ needs. As concerns the Recast, one would expect the EU to be more active in support of the update to come as the changes are EU specific as well as a requirement to fulfil the EU *acquis*, but EXBS support will also be important and it is essential that there is good cooperation and coordination among two capacity building programmes.

## 1.2. ...and in Croatia

Croatia has unique experience as an EU Member State as it is the only one which received an active EU-funded capacity building programme to enhance its dual-use export control system. Indeed, Croatia was one of the first countries to participate in the EU Pilot Project 04, which at the time was implemented by SIPRI (Stockholm International Peace Research Institute). Croatia was a partner country of the follow-up Pilot Projects 05 and 06 and Long Term Project (LTP) EU Programme “EU Cooperation in Export Control”, implemented by the German Federal Office for Economic Affairs and Export Control (BAFA), until its accession in July 2013. As the last EU MS acceding to the EU on 1 July 2013, Croatia became the 28<sup>th</sup>

---

7 today EUP2P Export Control Programme for Dual—Use Goods which is in 2006-2017 implemented by Consortium led by France Expertise – see <https://export-control.jrc.ec.europa.eu/Home/Dual-use-trade-control>.

EU MS. The previous enlargement of 10 countries<sup>8</sup> in 2004 had benefited from a capacity programme in the field of export controls and that from EXBS programme which is US-funded. The EU did not have any particular capacity building programme in this area at the time - some EU MS supported some countries on a bilateral basis - and the US invested much effort to support countries in the enhancement of their export control systems.

Until its accession to the EU, Croatia benefited from EU support and EXBS support. In the EU programme, as part of the SEE region, participation of Croatian officials allowed them to establish contact with future EU colleagues and those from the region, exchange experiences, participate in various conferences in the EU, and obtain support for the various seminars and activities and bring its law in accordance with the EU *acquis*. Once they became a EU MS, Croatian officials were invited to seminars in the beneficiary countries as “EU experts”. However, one should note that becoming a EU MS does not make a country officials an expert. Croatian officials already participated in SEE regional events by speaking and sharing their experiences in a very similar manner as they do now as an EUMS. At the time it was also very valuable to show how they built the system but also how they fulfilled and negotiated the EU accession and *acquis* in a field very much of interest to the SEE colleagues.

Their expertise was honed during many years in building their export control system and strengthening it by having key people ensuring the support and implementation of the system as well as coordination and building on different events organised not only by the EU Programme but also other donors.

---

8 Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.

As another major donor in Croatia the EXBS programme has contributed actively to the organisation of various export controls-related seminars and workshops and has supported Croatia, among others, in establishing an ICP tool.

Croatia was a very good example, also organising seminars in coordination with EU and EXBS programmes, for better cooperation and to avoid duplication of work. It has been multiplying and coordinating themselves seminars to build up as much knowledge as possible for the enhancement of its dual-use trade control system.

### 1.2.1 HOSTS AND ORGANISER

At the time, before becoming a EU MS, in addition to its participation in the building capacities programmes, Croatia hosted significant events on non-proliferation, as for example in 2008: the PSI Adriatic Shield 08 Exercise and Ninth International Export Control Conference.<sup>9</sup> In 2010 the UN organised a workshop on the “Implementation of United Nations Security Council Resolution 1540 (2004)” in Croatia for the South-East European Cooperation Process (SEECP) countries.<sup>10</sup>

Since their accession Croatia continued to organise capacity building events as hosts or organiser such as: a) in November 2013 PSI SEE Table Top Exercise in Zagreb, co-organized by Croatia and the United States. The aim of the exercise was to increase regional cooperation on preventing proliferation activities and explore opportunities for future cooperation by Participating States. Participants came from Albania, Bosnia-Herzegovina, the Republic of Macedonia, Montenegro, Serbia and Slovenia. b) UNSC 1540 and Croatia-Poland Peer Review meetings. In 2014 Croatia hosted the first Croatia-Poland Peer Review Conference on implementation

---

9 See: [www.exportcontrol.org](http://www.exportcontrol.org).

10 Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the Hellenic Republic, the former Yugoslav Republic of Macedonia, the Republic of Moldova, Montenegro, Romania, the Republic of Serbia, the Republic of Slovenia, and the Republic of Turkey.



of UNSC Resolution 1540 in June. The follow up meeting was held in Warsaw in October. The aim was to establish a framework to compare experiences and to examine, jointly and on an interactive basis, 1540 implementation policies, approaches and practices, border and export control, protection of sensitive materials, as well as the international and regional cooperation in the framework of the implementation of UNSCR 1540<sup>11</sup>.

### 1.2.2 NATIONAL EVENTS

Since accession to the EU, Croatian officials have been organising national events for Industry/Academia and Customs, re updates of the Dual-Use enforcements and regulations, observations to take into account when working with Iran and advantages of the implementation of and ICP. In the context of the Recast they also discuss with Industry, the potential impact on them in order to give their opinion on some specific points.

### 1.2.3 CAPACITY BUILDING PROGRAMMES SUPPORT

Croatian officials' experience is more and more sought after, not only on the international level but also by donors, to share their experience on the regional level in SEE or now other regions in the world. Since the FVE run by SIPRI in 2005 and then successive other EU programmes implemented by BAFA, Croatian officials worked hard to update their export control system; involved and built a national system and interagency cooperation; started cooperation with industry/academia, implemented ICP – developed regional network, but also with EU colleagues: joined International Export Control regimes<sup>12</sup>; coordinated outreach activities (EU; EXBS, International export control regimes, UNSCR 1540.... etc.); aligned and negotiated the EU *acquis*... all those steps gave great

---

11 <http://www.un.org/en/sc/1540/documents/Croatia-Poland%20Letter%20re%20effective%20practices%202014.pdf>.

12 WA and NSG since 2005, ZC since 2006 and AG since 2007.

experience to the officials in place at the time and still now. They have an extraordinary institutional memory which today they can share with others and which is rare. Not many countries have a new system in place, built by a few key people still working and active in the field which can share their experience and institutional memory on this specific field.

In the EU P2P capacity building programme they have been supporting some SEE national (ex: legal reviews) and regional events (ex: interagency cooperation, Licensing regional seminar that they hosted in 2016) but have also started to expand to the other regions as speakers. They share experience and their challenges in developing and implementing their dual-use export control systems with their colleagues from the region and their knowledge is used other countries such as Thailand and Brunei too.

In the US EXBS programme Croatia has a particular status. It is still eligible to receive active funding and it is still a partner country receiving support and additionally can participate in the meetings organised for “Graduate” countries and international conferences. For example, EXBS is using Croatian experience and asks Croatia to lead on some regional events such as ICP, Restrictive measures etc. or used in Kosovo to support them in the establishment of their system.

Therefore they are a great resource in sharing experience on how to set up a system from scratch, with the regional colleagues but also in other regions too.

#### **1.2.4 COORDINATION OF ACTIVITIES**

There is no national policy or coordination of national contributors to various capacity building programmes. According to the needs, for example a specific topic, officials help to identify the right person with the corresponding experience. Sometimes some have to receive the approval of their hierarchy and the decision will be taken upon consideration if they deem the support relevant or not, as it means the official being away from the office for a few days

and one has to measure its worth: investing in building capacity in another country while having less resources in your own. The active role of Croatia can be significantly attributed to the active role of key people who promoted their country in this specific field.

## **2. CONCLUSION**

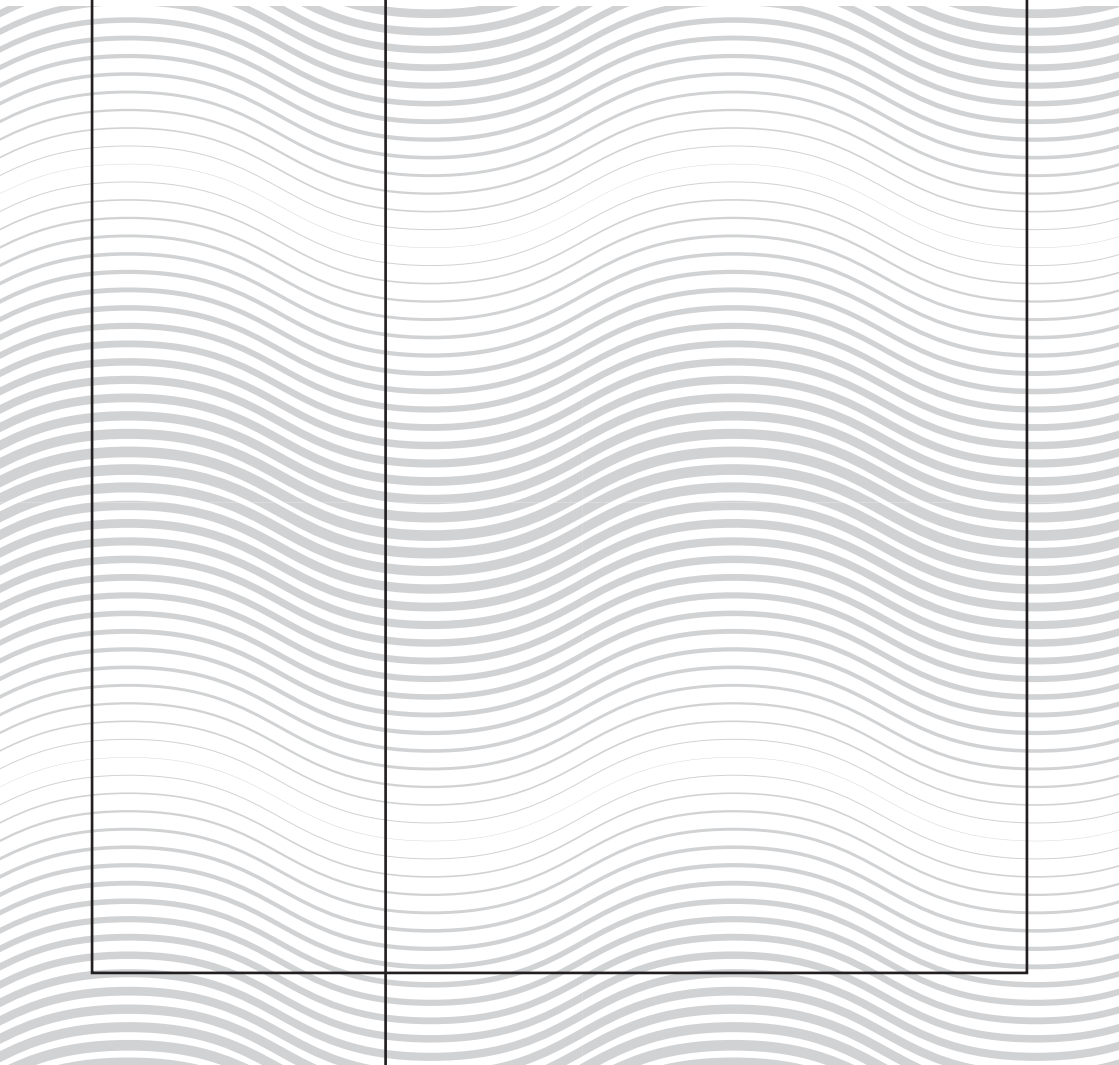
The Recast of the EU Regulation will have an impact in SEE region and Croatia will have particular role in the EU P2P Export Control Programme for dual-use goods and EXBS to support countries in the region in the process of the update due to the experience, institutional memory, expertise acquired during the years, geographical closeness and understanding of the region and its needs. Key people have been present since the beginning of enhancing the Croatian system through the tremendous experience and institutional memory they are having today. Being years recipient of capacity building programmes, Croatian have also experience on what works and not, what approach might be the efficient one so they can support today EUP2P or EXBS not only by their knowledge in the field but also advise on the approach one should take to have more efficient outcomes.

This success can be dedicated mainly to the key people who are promoting their countries and coordinating all activities and building on each other's events, even from different donors. Their role is important and today, thanks to them, there is a functional system and department with staff in place; however, one should be aware of that and a significant impact on the whole system and the role in the capacity programme might be felt in case those key people move to a new position, retire or fall ill. The system will not fall apart but the path and the speed might change.



**Part  
2.**

**The EU outreach  
programme**





# EU Export Control Outreach: Quo Vadis?

A.H.van der Meer and W. Lehofer

## 1. WHAT HAS BEEN DONE?

The EU's Outreach on Export Control on Dual-Use items is standing at an important crossroad. Since 2005 various programmes have been executed with a total value of 35 million Euro<sup>1</sup>. The international trade in dual-use items - goods, software and technology - that can be used for both civilian and military applications and/or can contribute to the proliferation of Weapons of Mass Destruction (WMD) is subject to controls to prevent the threat that these items may pose for international security.<sup>2</sup>

The current EU P2P programme aims to "export" the EU *acquis* in this area to partner countries, in particular Council Regulation 428/2009 of 5 May 2009 setting up a Community regime for the control of export, transfer, brokering and transit of dual-use items.<sup>3</sup> At the same time the objective is to promote trade facilitation and therefore stimulate the establishment of effective export control administrations in relevant partner countries and regions. However, the overarching objective is to support the implementation of inter-

- 
- 1 A similar programme exists in the USA called Export Control and Border Security (EXBS) programme. The programme is designed to help countries develop and improve their strategic trade and related border control systems. EXBS is active in over 60 countries with an annual budget of approx. 55 million USD (depending on the fiscal year). Regular meetings takes place between the EC and the US Government on mutual coordination in the execution of the programmes both at capital level as well as on the spot.
  - 2 Commission Staff Working Document of 28 September 2016, Impact Assessment, Report on the EU Export Control Policy Review, (SWD (2016)), pages 2 and 3.
  - 3 O J, L134, 29 .5. 2009, p.1.

national norms by the EU and its Member States related to the non-proliferation of WMD, in particular United Nations Security Council Resolution 1540 of 2004.<sup>4</sup> This Resolution, under Operating Paragraph III, calls on States to take and enforce appropriate and effective measures for export controls including their delivery systems and related measures such as trans-shipment control and financing<sup>5</sup>. It is particularly designed to prevent the involvement of non-State actors in the proliferation of WMD. Unfortunately, the implementation of this Security Council Resolution remains uneven with respect to the establishment of export control mechanisms. Based on a review in 2016, the UN Security Council therefore underlined the need to strengthen national export control measures for materials related to nuclear, chemical and biological weapons. The 2016 Resolution asks States that have not done so to start developing effective national control lists at the earliest opportunity.<sup>6</sup>

In the first instance, in 2004, EU outreach activities had a modest start with a pilot project, implemented by SIPRI, prior to the inception of the IfS. Work focused mainly on three countries in South East Europe. As can be seen from the figure below, activities were gradually scaled up. Over the course of the years, the geographical scope and the applied methodology were extended.

---

4 UNSCR 1540 (2004) of 28 April 2004 on non- proliferation of weapons of mass destruction.

5 For further explanations see for example, Viski, Andrea, United Nations Security Council 1540, A universal model?, in *Modelling Dual-Use Trade Control Systems, Security and Non-Proliferation*, Vol 10, Brussels, 2014, p. 101.

6 UNSCR 2325 (2016) of 15 December 2016, point 14. See also the final document on the 2016 comprehensive review of the status of implementation of Resolution 1540 (2004), December 2016.



**DEVELOPMENT OF THE EU Export Control DU  
OUTREACH PROJECTS**

<b>PP04</b> 3 countries 2005 Implemented by SIPRI	<b>PP05</b> 5 countries 2006-2007 Implemented by BAFA	<b>PP06</b> 8 countries 2007-2008 Implemented by BAFA
<b>LTP1</b> 18 countries 2008- 2010 Implemented by BAFA	<b>LTP2</b> 28 countries 2011-2013 Implemented by BAFA	<b>LTP3</b> 23 countries 2013-2014 Implemented by BAFA
<b>EUP2P-Global</b> 20 countries 2015-2017 Implemented by EF MS consortium	<b>EUP2P-CoE46</b> 10 countries 2015-2017 Implemented by EF MS consortium	<b>EUP2P-CoE38</b> 2countries 2015-2019 Implemented by BAFA

Successive programmes started to include activities in many regions worldwide and mainly worked on the basis of a so-called Five Pillar Approach covering issues related to relevant matters such as the legal framework, licensing, customs, awareness raising and sanctions. It took a considerable time to ensure that this work met international requirements, did reflect best international practice and at the same time did satisfy the conditions and specific requirements of partner countries. The collaboration focused on primary legislation in the field of export controls as well as sharing practical experiences in such areas as goods identification and licensing.

Recently, this approach was fine-tuned so as to become more tailored to the specific needs of a country or region. (See below)

To date, the global EU P2P programme works in 34 countries in 6 regions of the world with a focus on the countries of the Western Balkans and those countries belonging to the EU's neighbourhood policy. The global programme is executed by a consortium led by Expertise France. It includes the French Ministry of Economy, Industry and Numerics, represented by the Export Control Office

on Dual-Use Goods (SBDU), King's College London, the Swedish Inspectorate of Strategic Products, French and Belgian Customs, the National Nuclear Laboratory (UK) and the University of Liege.

The global programme ensures tailored activities addressing the specific needs of the partners at national and regional levels. A so-called 3WH-approach is applied: Why? Who? What? and How? This methodology focuses on reconciling the need for national specific circumstances to be addressed in the field of dual-use trade and the necessity to set certain standards of effectiveness and efficiency so as to achieve recognition of a fully functional control system by other stakeholders, such as suppliers. The four elements, which form the core of a comprehensive export control system, can be used as consecutive steps for the elaboration or the strengthening of controls.

How does this work in practice? Upon the basis of an in-depth analysis of the specific situation, a roadmap is drawn up with each of the partner countries. At the same time a European Union Common Training Toolkit (EUCOTT) is developed. This is a comprehensive set of training materials that cover all aspects of strategic trade controls. The tools are used in a tailored way depending on the country's level of export control. The kit contains various modules.

A second more country-specific EU P2P programme is managed by the German Federal Office for Economic Affairs and Export Control (BAFA). It provides for long-term experts to be posted "in country," currently in Jordan and in Kazakhstan. The approach of this programme is very much focused on practitioners and the carrying out of peer-to-peer consultations.

The two EU P2P Export Control programmes on dual-use items are managed by the European Commission's Directorate General (DG) for International Cooperation and Development DG (DEVCO), with support from the European External Action Service (EEAS) and the Commission's Joint Research Centre.

## 2. WHAT HAS CHANGED?

The time has now come to further reflect on future design such as the scope and methodology of any such outreach program, taking into account the more than 10 years' experience of executing such activities. This reflection is necessary for a number of reasons given that export controls are key to counter WMD proliferation:

1. The continual shifts in the global security environment. There is a growing nexus between various security threats, making a tapestry of entrenched and emerging threats following from globalisation. They are interlinked and transnational<sup>7</sup>. It is becoming increasingly clear that threats such as misuse of CBRN materials, cybercrime and terrorism are becoming more and more intertwined. To further illustrate this, the December 2015 Plenary meeting of the Wassenaar Arrangement “underlined the importance of further strengthening export controls... to prevent the acquisition of ... dual-use goods and technologies by terrorists”<sup>8</sup>. In order to provide a concrete framework for collective EU commitment to the fight against proliferation, the European Union adopted the so-called EU New Lines for Action. The document as endorsed by Council Conclusions in 2008 as well as in 2010 and 2013 includes on actions such as the review and strengthening of export controls on dual-use items. Concerns are expressed and an increase of vigilance as regards “...protecting the access to proliferation-sensitive knowledge” and “...further strengthening protection of our

---

7 Statement made by H.E. Kim Won – soo, UN Under Secretary – General for disarmament affairs during the Third EU Non – Proliferation and Disarmament conference, Brussels, 3 November 2016.

8 Idem Staff Working Document, page 6.

scientific and technical assets against unintended transfers of sensitive technology and know-how, including dual-use items...<sup>9</sup>”

2. Continuing rapid scientific and technological developments. Science and technology drive innovation. However, new high-technologies such as cloud computing, robotics, autonomous systems (industry 4.0), Unmanned Aerial Vehicles (UAV), additive manufacturing, bio- and nanotechnologies (miniaturisation) could be used for malicious purposes. More research institutes and private companies are involved in developing such technologies. In addition, the dividing line in each of these technologies between civilian and military purposes is becoming increasingly blurred. Their peaceful use must be ensured<sup>10</sup>;
3. The changes in global supply chains and increased interconnection mean that the development and production of dual-use items take place in a series of steps across many countries and entities. In addition, intangible technology transfers and new forms of financing and financial transfers need increased attention from a non-proliferation point of view. Also “Big Data”, which is beyond the capability of commonly used software tools to capture, curate, manage, and process, is another example of a new field which may be potential dual-use critical and which needs new forms of control mechanism to improve resilience against cyber-attack.
4. The risk remains high that non-State actors may acquire, develop, traffic in/or use of nuclear, chemical and biological weapons and the means of delivery resulting from rapid

---

9 [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/139067.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/139067.pdf).

10 *Idem*, page 3.

advances in science, technology and international commerce.<sup>11</sup> Threats are becoming more hybrid.<sup>12</sup> There are changing commercial relationships – particularly thanks to e-commerce – that might impact the effectiveness of export controls;<sup>13</sup>

5. Signs of outreach fatigue. In some countries, there is insufficient (political) will to cooperate. At a practical level, it is often the same institutions per country being addressed every time, leading to a situation that the same persons are trained or even over-trained, sometimes by competing programmes. Moreover in some cases, (i) there is insufficient trust among agencies to mutually cooperate and/or (ii) the necessary administrative reforms do not advance quickly enough, thus hampering the effectiveness of outreach activities. In some countries, due to scarce resources the necessary infrastructure is still lacking, making training difficult.
6. The policy context is changing. In a number of recent policy documents the following relevant statements were made:
  - A call for continuation of outreach activities on export controls done in the framework of UNSCR 2325 of December 2016;<sup>14</sup>
  - The need to continue to support export control activities in partner countries under the framework of the EU Global Strategy for the European Union’s Foreign and Security Policy,’ published in June 2016 by the EU High Representative for Foreign Affairs and Security Policy. The proliferation of WMD is a growing threat. The EU

---

11 Idem UNSCR 2325, page 1.

12 See Joint Framework on Countering Hybrid Threats, 6 April 2016, JOIN (2016)18 final.

13 Idem Staff Working Document, page 6.

14 Idem UNSCR 2325,, pages 4 and 6.

will support export control regimes, promote common rules inside the EU, and support export controls in partner countries;<sup>15</sup>

- The recast of EU regulation on dual-use export controls as proposed by the European Commission on 28 September 2016. The purpose of the recast is to strike a balance between ensuring a high level of security and adequate transparency, and maintaining the competitiveness of European companies and legitimate trade in dual-use items. The EC proposal acknowledges the importance of outreach activities and contains a new legal article relating to the need for reciprocal exchange of information with partner countries in a number of specified areas.<sup>16</sup>

7. Other policy documents such as on the revised Neighbourhood policy and on the renewed partnership with the countries of Africa, the Caribbean and the Pacific that asks for mutual cooperation on security and non-proliferation issues.<sup>17</sup> They also point to the blurring of frontiers between external and internal security threats in Europe. The ACP partnership should strengthen the joint commitment to combat the proliferation of WMD, including control of dual use items; fight the illicit manufacture, transfer, circulation, excessive accumulation; and limit the uncontrolled spread of small arms and light weapons. This could be done through the implementation of the Economic Partnership Agreements (EPA) which will address

---

15 European Union Global Strategy, page 42.

16 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) of 28.9.2016, COM (2016) 616 (final), Article 27. In comparison to the 2009 legislation the new proposal has added the notion "technical assistance" to the title.

17 Review of the European Neighbourhood Policy, Brussels, 18 November 2015 Join (2015) 50 final and A renewed partnership with the countries of Africa, the Caribbean and the Pacific, Strasbourg, 22 November 2016, Join (2016), 52 final.

export control dual use matters also at regional level with the aim of including security related matters in the early stages of economic development.

- a. Multilateral Export control regimes will continue to be an essential framework for non-proliferation. Consequently, the EU has updated the EU dual-use export control list and brought it into line with the framework of international non-proliferation regimes and export control arrangements<sup>18</sup>. The EU as a global actor might need to consider building on more common approaches in the international export control regimes as regime decisions clearly affect common security and market interests.

### **3. WHAT SHOULD BE DONE NOW?**

The EU has substantial experience in outreach activities for export control of dual-use items in partner countries. In the area of dual use export controls, the EU's single most significant comparative advantage over other donors lies in the broad interest of using the "tried and tested" EU dual-use list.

At the same time a number of circumstances have changed: (i) the security environment is more complex, interconnected and multifaceted; (ii) new technologies require adequate responses; (iii) there is an increased intertwining between the various global security threats; (iv) various policy frameworks ask for substantial partner-to-partner cooperation in export controls; and (v) the issue of outreach fatigue including lack of willingness to cooperate in

---

18 Latest update of the Dual Use list 2016: [http://trade.ec.europa.eu/doclib/docs/2016/october/tradoc\\_155059.pdf](http://trade.ec.europa.eu/doclib/docs/2016/october/tradoc_155059.pdf).

some countries as well as lack of effectiveness needs to be addressed. Meanwhile (vi), with the recast of the EU regulation on export controls, the EU acquis in this area is changing.

These matters require that the future approach to export control in partner countries needs to be reworked, especially in view of outreach activities. Export control remains essential in the fight against proliferation of WMD.

The EU should with respect to partner countries:

1. Engage with partner countries on export control issues with partner countries within the broader context of the objectives as put down respectively in Association Agreements, Partnership and Cooperation Agreements as well as in the framework of other bilateral agreements.
2. Seek stricter application of the so-called EU non-proliferation clauses as being part of the contractual relations between the EU and relevant countries, Association Agreements; Partnership and Cooperation Agreements.<sup>19</sup> Issues of export control including outreach should figure more prominently on the agendas of the Association/Cooperation Councils and other joint bodies as well being part of systematic bilateral consultations. EEAS and EU delegations should play a more prominent role in these matters. This should also include a better coordination within EU delegations for example between political and operational sections to ensure a more strengthened and coherent approach towards partner countries. In cases of substantial lack of progress on the establishment of effective export control mechanisms, a policy of conditionality could be considered for example in relation to financial support provided under Financial Development Cooperation.

---

<sup>19</sup> In November 2003, the Council of the European Union adopted the non-proliferation clause, also known as the weapons of mass destruction (WMD) clause.



3. The scope of the outreach should be broadened. Export controls remain essential but the increasing linkages and intertwining of the various forms of global threats require a broader approach. Therefore in mutual cooperation with partner countries, greater emphasis should be put on discussing organisational issues whereby various agencies work more closely together and exchange information to build mutual trust between them. For example, the strengthening of links with border control activities would be a logical step. The acquired experience under the EU's CBRN<sup>20</sup> Centres of Excellence Risk Mitigation Programme, applied in 54 countries worldwide, should be taken into account. There should be a stronger embedding of export control issues in the programme. Export control should be a more systematic part of the regional Round Table meetings under this initiative.<sup>21</sup> The creation of "regional champions" can broaden regional awareness and support, and helps partner countries to better assimilate know-how and advice. In addition, the Science Centres in Ukraine and in Kazakhstan should further step up their activities in export control issues assisting the various users of this policy such as scientists and engineers in their applications.
4. The present tailor made approach as established in the various roadmaps should be continued. However, their content should be discussed more widely with the partner countries thereby focusing more on the obstacles and the way forward to achieve deeper administrative reforms in the countries concerned with the aim of achieving an integrated approach in export controls. There should be a deeper analysis of the actors

---

20 CBRN means Chemical, Biological, Radiological and Nuclear materials.

21 For further information on the EU CBRN Risk Mitigation Centres of Excellence Initiative, see [www.cbrn-coe.eu](http://www.cbrn-coe.eu). The aim of the initiative is to develop an integrated CBRN policy in line with international standards.

including senior management, their motivations and interests in the administrative reform process. A «culture» of change and collaboration has to be promoted. Further investment in State structures remains a high priority. Moreover, apart from providing a mutual exchange of subjects of common interest - such as the recast of EU legislation, the functioning of the procurement channel under the Iran Nuclear Deal, the consequences of free trade zones and various technical matters - the outreach should be more thematically based, addressing issues such as: “terrorism and export control”; “cybercrime and export control”; “nuclear respectively bio and chemical security and export control...” The issue of intangible transfers i.e. transmission of software and technology by electronic media, the matter of new cyber-tools (cyber-surveillance technologies) and new forms of financial transactions such as Bitcoin are among other topics that are to be addressed.

5. The partners to be addressed in partner countries should be extended. Activities should be more focused on the users of export control systems by scientists, investors, private business persons, bankers, financiers, brokers, IT specialists and other partners involved in the business development chain. Awareness-raising activities should be stepped up;
6. The working modalities should change. Seminars and workshops should be the exception instead of being the rule. Peer-to-peer reviews, contacts and consultations should be systematic. Training should take place on the basis of case studies and table-top exercises, screening exercises should promote the role of various agencies in terms of competence, functioning, resources and mutual cooperation. EU experts should be deployed in more countries for longer periods to further ensure direct hands-on cooperation. Individual experts coming from the most advanced partner countries should play a greater role

in the execution of the programme. They must play a mentor role in their region. In exceptional cases training equipment and software should be supplied.

#### **4. IN CONCLUSION**

Today's global security threats are broad and shifting. They are growing in number and in complexity. All achievements in the last decades including e.g. international technology exchange, open markets, enhanced trade flows are under scrutiny, taken in to account current security challenges. The European Commission with its recast proposal of September 2016 has taken bold steps to respond to these challenges by modernising the EU's existing control provisions as well as control systems. This mind set should extend further, to the modernisation of outreach and cooperation with partner countries. Existing non-proliferation networks should be used for developing effective export control systems. The practical suggestions in this article will serve the purpose of nurturing the further evolution of the EU's outreach approach from export control to strategic trade controls and hence security cooperation.



# Export Control Capacity building: An Analysis of US and EU Assistance Programs

Andrea Viski

*Project Alpha, Department of War Studies, King's College London*

## 1. INTRODUCTION

Since United Nations Security Council resolution 1540 came into effect in 2004, capacity building programs have assisted countries worldwide in meeting the requirements of “appropriate” and “effective” implementation of the resolution’s operating paragraphs. This is especially true of the export control field, where resolution 1540 created an international legal requirement for all UN Member States to “establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such [items.]”<sup>1,2</sup> While significant resources from the major providers of export control capacity building have been devoted to outreach activities, less attention has been given to a comprehensive analysis of structure, resources, training methodology, project/program decision-making mechanisms, coordination, progress, visibility and sustainability.

This chapter analyses some of these aspects as they pertain to the two largest export control capacity building programmes, that

---

1 UNSCR 1540.

2 For a standard definition of export controls and strategic trade controls, please see STR issue 1. Note here that the term “export control” is used in this chapter due to the use of this term by most EU and US capacity building programs, even if the term “strategic trade” is also used in certain contexts. This diversity of terminology use reflects a still lingering question regarding accepted practice not just at the EU and US level, but worldwide.

of the European Union and the United States. While many other assistance providers carry out activities in this field, the US and the EU are by far the most important in terms of resources and impact. The analysis presented in this chapter will consider and process the differing models of capacity building and link these ramifications for outcomes and areas of potential cooperation.

This analysis proves rather complex due to the unique qualities of the strategic trade field, which is at once highly inter-disciplinary as well as politically, economically and strategically sensitive, often to the detriment of coordination and communication between both providers and recipients of outreach. Yet it is exactly because of the delicacies involved, and their consequences on the effectiveness of the resources used and objectives sought, that comparative analysis crystallises specific areas of synergy as well as the realities and challenges of export control capacity building.

## **2. DEVELOPMENT AND STRUCTURE**

US strategic trade control outreach activities have been in place since the fall of the Soviet Union and the subsequent need to control the movement of sensitive materials, equipment and technology from post-Soviet and Eastern European post-Soviet satellite States. These programs, originally under the US Department of Defense, provided technical assistance focused on bringing export controls systems up to international standards and establishing the capability to interdict illicit trafficking in Weapons of Mass Destruction (WMD) and related materials, delivery systems, dual-use items and conventional weapons.<sup>3</sup> In 1998, the EXBS program was established within the Department of State's Bureau of International Security

---

3 The EXBS Program, US Department of State, <https://2001-2009.state.gov/documents/organization/113710.pdf>.

and Non-proliferation (ISN)-Office of Export Control Coordination (ECC) and expanded US activities worldwide, with outreach taking place in five continents and around 64 countries to date.<sup>4</sup>

While EXBS is the largest US capacity building program in the strategic trade area, other programs under different US departments and agencies also have outreach in this domain under their mandate.<sup>5</sup> The Department of Energy's National Nuclear Security Administration's (NNSA) International Non-proliferation Export Control Program (INECP) works with countries on creating "robust strategic trade control systems consistent with international norms," to "detect and prevent the illicit procurement of equipment, materials, and technological know-how by States and terrorist organizations seeking to develop weapons of mass destruction (WMD)." While the program is under the NNSA, its mandate includes not just nuclear but all materials, equipment and technology in the WMD context.<sup>6</sup>

Both EXBS and INECP utilize expertise and support from other US departments and agencies with strategic trade control responsibilities, including:

1. **Department of Commerce:** The Bureau of Industry and Security (BIS) within the Department of Commerce regularly cooperates with US outreach programs due to its predominant role in US licensing, enforcement, policy guidance, and national compliance training;
2. **Department of Defense:** International Counter-proliferation Programme and Proliferation Prevention Programme;
3. **Department of Homeland Security;**
4. **Department of Justice.**

---

4 Ibid.

5 [www.sipri.org/sites/default/files/research/disarmament/dualuse/pdf-archive-att/pdfs/sipri-arms-trade-control-capacity-building-lessons-from-dual-use-trade-controls.pdf](http://www.sipri.org/sites/default/files/research/disarmament/dualuse/pdf-archive-att/pdfs/sipri-arms-trade-control-capacity-building-lessons-from-dual-use-trade-controls.pdf).

6 The NNSA also implements projects such as the Second Line of Defense.

The ISN/ECC of the State Department has the mandate to coordinate all US strategic trade control capacity building activities, specifically through chairing the Interagency Working Group on Non-proliferation Export and Border Control Assistance (IWG) in order to ensure an integrated approach. The IWG also coordinates the experts involved in outreach activities from the US private sector, academia and non-governmental organisations. In addition, the IWC coordinates the activities that take place under EXBS and INECP. One example is collaboration between both programmes in providing commodity identification (CIT) training to border enforcement officials. Coordination further takes place through the EXBS Advisor Program. EXBS Advisors are stationed in US embassies in certain partner countries and act as national or regional points of contact to support strategic trade control activities. The Advisors, in addition to working directly with partner countries stakeholders, plan and coordinate US outreach activities. There are currently around twenty EXBS advisors covering forty countries.<sup>7</sup>

The EU implements export control capacity building in a significantly different manner from the US, in part due to its development and structure. The EU, similarly to the US, began its first programs related to this area after the Cold War, with projects such as the “Technical Assistance Programme Stimulating Partnerships between the EU and the Community of Independent States,” (TACIS) that lasted from 1991-2012.<sup>8</sup> The dedicated EU programme on export controls is however younger than the US programme, having begun its first export control pilot project in in 2005.<sup>9</sup> Previously, individual EU Member States provided bilateral export control cooperation or ad hoc technical assistance in

---

7 <https://www.state.gov/t/isn/ecc/c27918.htm>.

8 “TACIS,” European Press Release, [europa.eu/rapid/press-release\\_MEMO-92-54\\_en.htm](http://europa.eu/rapid/press-release_MEMO-92-54_en.htm).

9 [export-control.jrc.ec.europa.eu](http://export-control.jrc.ec.europa.eu).



the chemical, biological, radiological and nuclear (CBRN) field.<sup>10</sup> The 2004 initiative to form a dedicated EU programme on export control outreach was a response to United Nations Security Council resolution 1540 as well as an outcome of the 2003 EU Strategy against the Proliferation of Weapons of Mass Destruction (WMD), which underscored the EU's "commitment to strong national and internationally-coordinated export control" through the "strengthening [of] export control policies and practices within its borders and beyond, in co-ordination with partners. The EU will work towards improving the existing export control mechanisms. It will advocate adherence to effective export control criteria by countries outside the existing regimes and arrangements."<sup>11</sup>

As mentioned above, US capacity building programmes are implemented directly, for the most part, by US governmental agencies, relying upon experts from other organisations as necessary. The EU export control outreach programme, by contrast, has since its inception used EU Member State "service providers," to use the formal EU terminology, individually or as a consortium, to implement projects. In the export control domain, the EU Directorate General for Development and Cooperation (DG DEVCO) provides the terms of reference for EU external assistance projects, which it publishes openly as Calls for Tender.

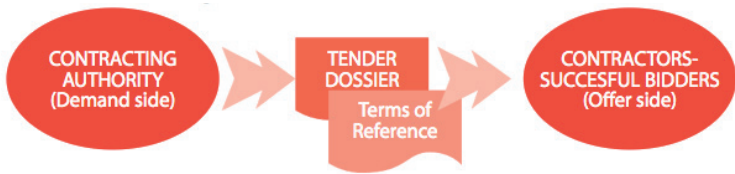
---

10 <https://www.sipri.org/sites/default/files/research/disarmament/dualuse/pdf-archive-att/pdfs/sipri-arms-trade-control-capacity-building-lessons-from-dual-use-trade-controls.pdf>.

11 "EU Strategy against Proliferation of Weapons of Mass Destruction," <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015708%202003%20INIT>.

Figure 1

**EU Bidding Process for European Projects\***

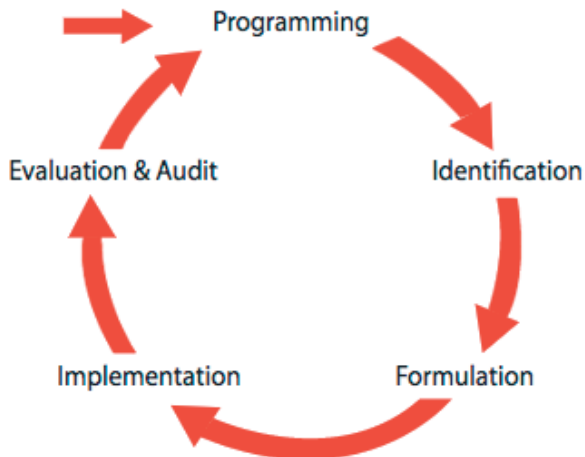


\* <http://www.evropa.gov.rs/Evropa/ShowDocument.aspx?Type=Home&Id=526>

This process forms part of a phased and structured approach to EU external assistance projects, formerly known as Project Cycle Management (PCM) phases (see Figure 2). The phases include programming, identification, formulation, implementation and evaluation and audit.

Figure 2

**EU Project Cycle Management Phases\***



\* <http://www.evropa.gov.rs/Evropa/ShowDocument.aspx?Type=Home&Id=526>

DG DEVCO, with cooperation from other European Commission DGs, is primarily responsible for the programming, identification, formation and to some extent the evaluation and audit phase of export control outreach projects, while the successful service provider is responsible for implementation, overseen by DEVCO. Potential service providers go through a neutral bidding process to win contracts for the “implementation” phase that have ranged from 1-3 years for export control projects. DG DEVCO has ultimate decision making power regarding project activities, funding and other decisions, however day-to-day implementation of projects is in the hands of the chosen service provider.

The first EU export control outreach project was implemented by the Stockholm International Peace Research Institute as service provider, and from 2006 implementation was taken over by the German Federal Office for Economic Affairs and Export Control (BAFA), which implemented several projects commonly referred to in the dual-use export control field as “Long-term Programmes” (LTPs). As of 2017, there are three concurrent EU dual-use export control outreach projects, one implemented by BAFA and two implemented by a consortium comprised of service providers from different EU Member States and led by Expertise France.<sup>12</sup>

### **3. RESOURCES**

There are inherent challenges in comparing two vastly different capacity building programs that are important to keep in mind. First, the US budget for such activity is vastly larger than that of the European Union. For example, the 2016 budget for the US Export Control and Border Security (EXBS) program was 58.7 million USD from the Foreign Operations Appropriations Act, and

---

12 <http://www.cbrn-coe.eu/Projects/TabId/130/PagelD/2/PgrID/543/PID/543/CategoryID/12/CategoryName/Projects/Default.aspx>.

this figure does not take into account the budget for other US programs such as the International Non-proliferation Export Control Program (INECP) under the Department of Energy's National Nuclear Security Administration or other activities undertaken by, for example, the Department of Commerce's Bureau of Industry and Security.<sup>13</sup>

The EU budget for strategic trade outreach projects, over a two/three year timeframe, is approximately EUR 7 million.<sup>14</sup> The money comes from the Instrument contributing to Stability and Peace (IcSP), which is an EU instrument that supports security initiatives and peace-building activities in partner countries that, including not just export control, totals over 250 projects in 70 countries with a budget of EUR 2.3 billion for 2014-2020.<sup>15</sup> The money used from the IcSP on export control is divided between several different projects under different contracts, and utilizing, at times, different service providers. The budget for one project can range from EUR 1-3 million on average. The IcSP took over in 2014 from the Instrument for Stability (IfS) which had funded previous EU outreach projects since 2006 with around EUR 14 million devoted to dual-use export control capacity building for the period 2007-13.<sup>16</sup>

One ramification of the IcSP taking over from the IfS in 2014 was that, structurally, all export control capacity building projects were brought under the specific funding envelope of the EU CBRN Centres of Excellence (CoE). While in principle this change indicates a mere shift of administrative details regarding the funding instru-

---

13 <https://www.state.gov/t/isn/ecc/> It should be noted that EXBS activities include outreach on border security.

14 <http://www.cbrn-coe.eu/Projects.aspx>.

15 [http://ec.europa.eu/dgs/fpi/what-we-do/instrument\\_contributing\\_to\\_stability\\_and\\_peace\\_en.htm](http://ec.europa.eu/dgs/fpi/what-we-do/instrument_contributing_to_stability_and_peace_en.htm).

16 Council of the European Union, Six-monthly progress report on the implementation of the EU Strategy against the proliferation of weapons of mass destruction (2012/II), Official Journal of the European Union, C39, 9 Feb. 2013.

ment, in practice this meant that the EU export control projects began to follow the structure, coordination and communication apparatus of the CoE initiative.

#### **4. SUBSTANCE AND METHODOLOGY**

The US approach to export control outreach revolves around establishing and strengthening five “pillars”:

1. Comprehensive Legal/Regulatory Frameworks;
2. Effective Licensing Procedures and Practices;
3. Enforcement Techniques and Equipment;
4. Government Outreach to Industry;
5. Interagency Coordination.

Project activities are centred around creating impacts in these five areas. For example, under the comprehensive legal/regulatory frameworks pillar, EXBS supports workshops and exchanges that facilitate the drafting, adoption and implementation of export control laws and regulations.<sup>17</sup> In addition to activities, a substantial portion of the EXBS budget goes towards the provision of equipment to partner countries.

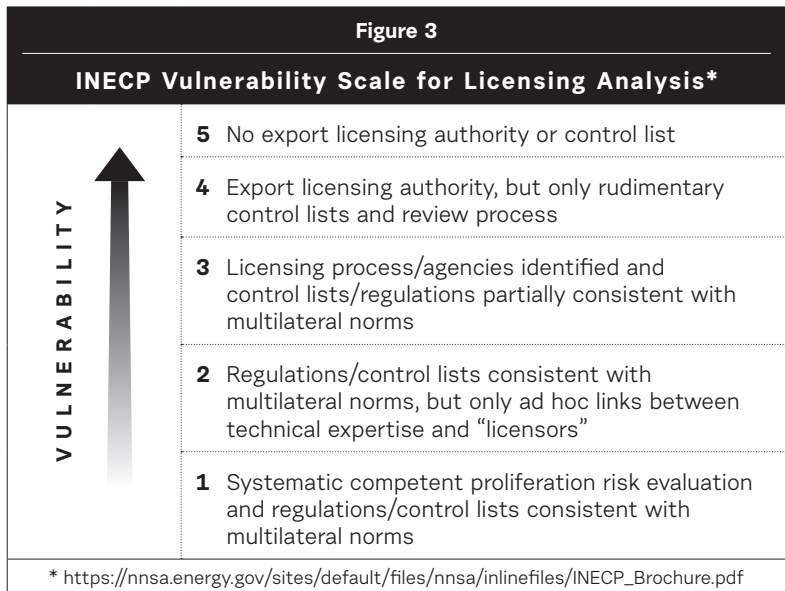
The US INECP program uses a slightly different approach in its activities. Engagement with partner countries is “based on vulnerability assessments of three export control system elements in accordance with the norms and benchmarks established by various treaties and multilateral arrangements of the international non-proliferation regime.” These include:

1. Enterprise compliance;
2. Licensing Analysis;
3. Enforcement.

---

17 “US Assistance Programs for Export Control Development,” EXBS, US Department of State.

Partner country adherence to each of these elements is assessed against a vulnerability scale of five levels (see Figure 3).



As noted above, the State Department’s Office of Export Control Cooperation is responsible for coordination between the different US programs through, in part, through the Interagency Working Group on Non-proliferation Export and Border Control Assistance (IWG). It is important to consider, as a starting point for measuring export control capacity building outreach impact, how the varying approaches implemented by the two US programmes is perceived at the partner country level.

The EU approach, similarly to the US one, may differ depending on the service provider used for project implementation, whom are free to use their own approaches granted that they are accepted and approved by DG DEVCO. BAFA, similarly to EXBS, uses a pillar approach to project implementation, subject to the requirements of partner countries through a tailored approach:

1. Legal;
2. Licensing;
3. Customs;
4. Awareness;
5. Sanctions.<sup>18</sup>

The consortium led by Expertise France, meanwhile, has employed a methodology developed by the European Commission's Joint Research Centre (DG JRC) and the University of Liege's European Studies Unit (ESU) entitled the 3WH approach. The approach consists of four elements of a comprehensive export control system and gives flexibility to implementers and partner countries regarding the design and the implementation of their export control program.<sup>19</sup> The myriad elements can be visualized as a Mindmap, a sample of which can be seen in Figure 4.

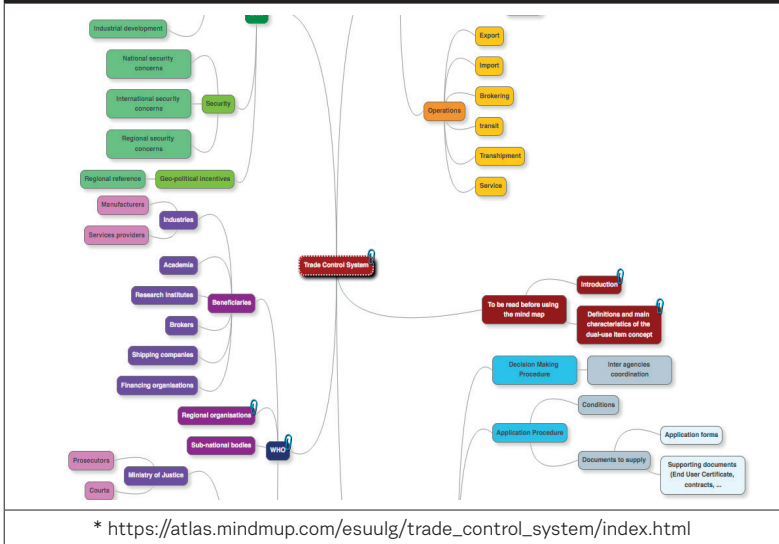
---

18 George Pietsch, "EU Cooperation in Export Control," Eschborn, 2011, [https://export-control.jrc.ec.europa.eu/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core\\_Download&EntryId=260&language=en-GB&PortalId=0&TabId=98](https://export-control.jrc.ec.europa.eu/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=260&language=en-GB&PortalId=0&TabId=98).

19 "A New Methodology to Review or Elaborate a Trade Control System," <http://www.esu.ulg.ac.be/index.php?serv=49&m=pub>.

Figure 4

Sample of W3H Mindmap Elements\*



\* [https://atlas.mindmap.com/esuulg/trade\\_control\\_system/index.html](https://atlas.mindmap.com/esuulg/trade_control_system/index.html)

## 5. CONCLUSION: US AND EU EXPORT CONTROL ASSISTANCE PROGRAMMES: RAMIFICATIONS

There are several important factors to consider that stem from the varying aspects of the US and EU programmes analysed so far in this chapter. These factors are important to consider because their analysis may highlight areas where the effectiveness of individual projects or the overall global effort to promote export control implementation worldwide can be strengthened. While programmes may differ based on resource constraints, methodologies or other factors, the overall objective of strengthening non-proliferation export controls is a shared one and should be kept in constant and



clear focus when formulating and implementing outreach. This section will highlight some of the main differences describes so far and their ramifications.

### 5.1. **Perception by Partner Countries**

The approaches to methodology and substance used by each export control capacity building project, be it a US or EU project, differ. While on the one hand this is a natural consequence of different programming priorities, it should be a point of inquiry whether different implementation approaches and methodologies employed by each project affect the perception, and beyond that, the prioritization of export control elements, by project partner countries. Take the EXBS and BAFA pillar approaches, for example. If a country would be a partner under both programs, how would the difference in the substance of the pillars affect the country's perception of what a comprehensive export control system should look like? Or, as in the case of the EU, a partner country sees a change in the service provider providing export control assistance, with one having a different methodology from the other, does that hinder, especially over time, progress towards implementation?

This issue is further magnified in consideration of the vagueness of the one internationally legally binding instrument mandating national implementation of export controls, UNSCR 1540. As the language of the resolution requires “appropriate” and “effective” implementation, national interpretation of what those terms require in the EU and US translate to varying approaches undertaken by countries worldwide. While the 1540 Committee has drafted a matrix identifying specific measures that indicate compliance with the resolution language, the measures are not universally accepted.

This begs the natural question: Would it be possible, or even make sense, for the individual programmes within the US and the EU, and beyond that, for the US and EU globally, to aim for a uniform approach to export control capacity building, in order to present a united and uniform message to all countries regarding the way to

effectively implement non-proliferation export controls? While there may not be a right or wrong answer to this question, it is important to consider it in the context of the many approaches that currently exist.

### **5.2. In-Country Personnel**

The consequence of the vastly different resources available under the US and EU programmes is that while the US and the European Union are the two biggest players in the export control capacity building arena, the US has far greater resources that it can commit to its programme. Funding EXBS Advisors, for example, is one example of the US capacity building strategy that cannot be implemented under the EU projects to a great degree due to the resources involved. Having country-based advisors allows the US to work closely with partner country and regional stakeholders, developing trust and relationships useful for mutual cooperation. The setup also allows for a higher level of information to feed back to programme directors and analysts based in the US due to the regular communication between the Advisors and US embassy officials (Advisors are based in the embassies).

This model was tested under the EU programme as well. The EU CBRN CoE Project 38, “Export Control Outreach for Dual-use Items in Jordan and Kazakhstan,” funded the deployment of “long-term experts” in both partner countries, as part of a new EU approach to project implementation. However, except for a key expert originating from the region that formed part of Project 43, “Export Control Cooperation in South East Asia,” the EU has not used further country-based advisors or experts as part of its projects, and the use of in-country project representatives by the EU is nowhere near the in-built, almost essential role of EXBS Advisors under the US programme.

### **5.3. Grouping Export Controls with Other Areas**

One important nuance that differentiates the US and EU programmes is the grouping of the US export control project together

with border security activities – hence the name Export Control and Border Security. These two areas are conceptually and practically linked and in many instances, it is important for export control stakeholders to be in communication or work directly with border security stakeholders. The US is therefore able to situate project activities across this broader spectrum of supply chain security and non-proliferation. In the EU, border security projects are differentiated from export control projects. While these projects come from the same IcSP funding envelope, they are implemented by different service providers, under, in some cases, different European Commission Directorate Generals, and largely without coordinating with export control project implementation service providers.<sup>20</sup> Some EU border security outreach projects are devoted exclusively to the radiological/nuclear field, while others, which have been under the CBRN CoE framework, have been more comprehensive.

Interestingly, the US and the EU, through the Border Monitoring Working Group (BMWG), and with the added party of the International Atomic Energy Agency (IAEA), cooperate and share information regarding plans and programmes to be implemented in cooperation with partner countries to combat the illicit trafficking of nuclear and other radioactive material that is out of regulatory control.<sup>21</sup> The BMWG has been successful in this mission, and with time and constant building of trust and experience between the parties, lasting models of coordination, communication and cooperation have been established. A similar attempt in the export control field has been made between the EU and the US, although perhaps due the broader scope, lack of an overarching

---

20 <https://ec.europa.eu/jrc/en/news/strengthening-global-nuclear-security-support-tajikistan>.

21 "The Border Monitoring Working Group as a model for multilateral collaboration," <https://ec.europa.eu/jrc/en/publication/border-monitoring-working-group-model-multilateral-collaboration>.

international body such as the IAEA, and other factors, this group has not yet reached the level of the BMWG in terms of achieving commonly set objectives.

#### 5.4. **Top-down or Bottom-up?**

One issue that both US and EU programmes grapple with is the balance between formulation and implementation of outreach projects being fed by a top-down or bottom-up process. In practice, this means the difference between how much partner country input, situation and preferences influence project programming. From this perspective, the US and the EU have vast experience and insight into the “proper” implementation of export controls and as providers of assistance, are positioned to explain and promote their models of doing so to assistance recipients. However, because countries differ in their profiles as well as their proximity to specific supply chain and proliferation vulnerabilities, the US and EU models of implementation may not be appropriate in each case. This observation is underscored, for example, by the very situation of the European Union itself, where one common dual-use export control regulation directly applicable to all Member States is implemented differently in each.

While all assistance projects strive for the appropriate balance between bottom-up and top-down approaches to capacity building, partner country input could help work towards the right balance.

#### 5.5. **Conclusion**

The most effective and efficient use of resources, approach to implementation, and other factors is a constant work in progress for all export control assistance projects, and it is unlikely that a clear-cut answer exists with regards to most questions. However, exploring capacity building experiences with regards to the issues highlighted in this chapter may be a useful point of communication and reference in any cooperation exercise that takes place between assistance providers.

## Non-proliferation Outreach: An NGO perspective

Valerie Lincy

*Wisconsin Project on Nuclear Arms Control*

### 1. EVOLVING RULES, ADAPTING OUTREACH

The role of non-governmental organizations in conducting outreach on non-proliferation expanded in response to U.N. Security Council resolution 1540 of April 2004, and further increased with U.N. resolutions on Iran and North Korea. Previously, civil society generally played a traditional advocacy role centered on supporting the legal requirements and norms of the non-proliferation regime, and in particular State commitments under the nuclear non-proliferation treaty (NPT). Subsequent to resolution 1540, civil society began playing a greater operational role, not only promoting best practices with regard to export control, but providing advice and assistance to governments and companies with implementation. U.N. resolutions extending and expanding the mandate of resolution 1540 encouraged such a contribution, most explicitly in U.N. Security Council resolution 2325 of December 2016. In it, the Security Council committee for resolution 1540 (1540 Committee) was encouraged to draw upon civil society expertise in conducting outreach and in assisting States with implementation.<sup>1</sup>

---

1 United Nations Security Council resolution 2325, S/RES/2325 (December 15, 2016), [http://undocs.org/s/res/2325\(2016\)](http://undocs.org/s/res/2325(2016)).

The Wisconsin Project on Nuclear Arms Control's outreach has mirrored this evolution. In the late 1980s and early 1990s, the Wisconsin Project uncovered what it assessed to be dangerous sales of strategic goods to countries suspected of developing weapons of mass destruction and publicized those sales. This advocacy was aimed at compelling States to strengthen their export control systems through public exposure. Early examples of this advocacy include Norway's heavy water sales to Israel<sup>2</sup> and Western European sales of nuclear and missile technology to Iraq.<sup>3</sup> The Wisconsin Project increasingly coupled advocacy with outreach and, in 1995, in response to the U.S. Department of Commerce's Enhanced Proliferation Control Initiative (EPCI), began conducting outreach directly to U.S. companies. EPCI required exporters to seek a license if they knew or had reason to know that a potential customer was connected to proliferation, even if the technology itself did not require a license.<sup>4</sup> Such "catch all" controls placed a burden on U.S. exporters. At the time, there was no reliable public source of information about end users of concern. NGO research focused on countries and programs of concern for proliferation but not on individual entities supporting those programs. The Wisconsin Project created the Risk Report to mitigate this burden, providing open source profiles of entities contributing to proliferation. The Wisconsin Project also conducted outreach to companies on how to use the Risk Report to help implement new export screening

---

2 Gary Milhollin, "Who Controls the Israeli Bomb?," *Arbeider Bladet*, January 21, 1987, available at <http://www.wisconsinproject.org/who-controls-the-israeli-bomb/>.

3 Douglas Jehl, "Who Armed Iraq? Answers the West Didn't Want to Hear," *New York Times*, July 18, 1993, available at <http://www.wisconsinproject.org/who-armed-iraq-answers-the-west-didnt-want-to-hear/>.

4 "Catch-All Controls," U.S. Department of State, accessed on May 26, 2017, <https://www.state.gov/strategictrade/practices/c43179.htm>; "BIS Annual Report - FY 1998" U.S. Department of Commerce, 36, available at <https://www.bis.doc.gov/index.php/documents/policy-guidance/928-bis-annual-report-fy-1998/file>.

requirements. This outreach focused on high-tech manufacturers in the United States, Europe and Japan, which at the time represented the primary supply-side of dual-use technology.

In 2003, the nuclear smuggling network run by Pakistani metallurgist Abdul Qadeer Khan was exposed. This network is illustrative of the change in the proliferation supply chain and the need to adapt export controls and outreach strategies in response. Khan worked with companies and individuals operating in Germany, Great Britain, Malaysia, Singapore, South Africa, Switzerland, Turkey, and the United Arab Emirates to several countries of concern.<sup>5</sup> The network made clear that dual-use manufacturing was no longer concentrated in a limited number of countries. Yet emerging supplier States lacked an established export control system, and thus the ability to investigate and prosecute dangerous sales. The network also increased awareness about the role of transit or transshipment hubs as a means of masking the ultimate end use of sensitive items. The Khan network underscored the importance of engaging new States on export controls – those vulnerable to unwitting participation in an increasingly complex proliferation supply chain.

The adoption of resolution 1540 explicitly recognizes this complexity by requiring States to develop and maintain effective national export controls, covering not only direct exports but also transshipment, transit, re-exports, and financial and transport services.<sup>6</sup> Such a system also must include “establishing end-user controls” and “establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regu-

---

5 “Press Release by Inspector General of Police in Relation to Investigation on the Alleged Production of Components for Libya’s Uranium Enrichment Programme,” Royal Malaysian Police, February 20, 2004, available at <http://www.iranwatch.org/library/government/malaysia/royal-police-office/press-release-inspector-general-police-relation-investigation-alleged-production-components-libya%E2%80%99s>.

6 United Nations Security Council resolution 1540, S/RES/1540 (April 28, 2004), [http://undocs.org/S/RES/1540\(2004\)](http://undocs.org/S/RES/1540(2004)).

lations.”<sup>7</sup> The adoption of resolution 1540 raised the importance of export controls and linked the issue explicitly to curbing further proliferation of nuclear, chemical, and biological weapons and their means of delivery. The resolution increased the urgency with which States viewed the issue and the need to adopt or enhance export control laws. However, as with EPCI a decade earlier, the new rules did not provide States with specific implementation guidance.

The Wisconsin Project had been conducting export control outreach to governments since 2000, in cooperation with several U.S. government agencies. The first five years of the initiative aimed to improve strategic trade licensing and enforcement in former Soviet Republics and Central and Eastern Europe through capacity building and training. In the first year of this initiative, the Wisconsin Project provided the Risk Report to 65 officials involved in export controls from government organizations in Bulgaria, Lithuania, Moldova, Romania, and Slovenia. To address the needs and interests of this audience, the scope of the Risk Report was broadened to include seminal reference documents related to export controls, including multilateral export control regimes and U.S. export control regulations (EAR, ITAR, NRC), as well as explanatory information on dual-use goods. Following the adoption of resolution 1540, this outreach initiative was expanded to States in Asia, Latin America, and the Middle East. Resolution 1540, together with a growing concern about hybrid threats such as the use by terrorists of weapons of mass destruction, drove these States to adhere to international export control norms and to improve their national control systems.

---

7 Ibid.



## **2. FROM INTEREST TO IMPACT: ORGANIZING ENGAGEMENT FOR EFFECTIVE OUTREACH**

The principal deliverable of Wisconsin Project outreach is access to the Risk Report. Providing access to open source profiles of entities linked to proliferation is part of an effort to build capacity among recipient States with regard to a variety of export control tasks, including end user screening, investigations, and targeting. The centralization of multiple sources of relevant reference information to support dual-use trade controls is aimed at promoting international export control and non-proliferation norms to new stakeholders, and thus enhancing international security.

As an NGO with a mission to inhibit trade from contributing to the proliferation of weapons of mass destruction, the Wisconsin Project only engages State Parties to the Nuclear Non-Proliferation Treaty (NPT). This is considered a baseline requirement that demonstrates a national commitment to nuclear non-proliferation. If a State already is a major supplier of nuclear or missile related technology, membership or adherence to the relevant multilateral supply regime is a further demonstration of commitment to non-proliferation. The Wisconsin Project assesses that these commitments increase the likelihood that its outreach activities will be useful and have a lasting impact.

A country-specific outreach strategy is then designed by the Wisconsin Project. As recognized by resolution 1540 and subsequent resolutions, States have a differing threat prioritization, a differing level of preparedness to mitigate these threats, and therefore face different challenges in terms of implementing dual-use trade controls. In designing an outreach agenda, the Wisconsin Project considers the status of the following criteria in each country: a legal and regulatory framework; a national control list; institutional authorities for export review and enforcement, trained experts assigned to such institutions, a dual-use manufacturing base, and in-country knowledge of dual-use technology. The Wisconsin

Project also seeks information on past outreach and any ongoing or planned efforts, particularly those that have dedicated personnel, such as the joint U.N. Office on Drugs and Crime-World Customs Organization Container Control Programme. The purpose of this review is to gain an understanding of the audience being engaged and the level of familiarity with export control and non-proliferation norms.

### **2.1. Outreach in States with a nascent strategic trade control system**

States with few of these criteria are assessed to have a nascent dual-use trade control system. Resolution 1540 has raised the issue of such controls and these States are working to fulfill the resolution's requirements. The legal and regulatory framework undergirding controls generally is a patchwork of existing laws. There is often no, or low, in-country knowledge of dual-use technology within the government, and little or no dual-use licensing. Enforcement officials often have experience countering smuggling and investigating and prosecuting customs violations, but must learn to apply this experience to the realm of strategic trade. These States may have an emerging dual-use industrial base, or, more often, may be a strategic location used for transit or transshipment. In the former case, there are typically few government-led corporate outreach initiatives.

Organizing successful outreach in such States is challenging. Early outreach generally is focused on building regulatory and institutional capacity. However, drafting and passing a comprehensive law governing strategic trade can be a lengthy process. Progress is slow as various government agencies may seek to protect their authority in a new system. Set backs are frequent, due to elections, changing personnel, shifting priorities, and a concern that trade controls will slow development in countries seeking to grow their economies through exports. There can be a reflexive reluctance to control exports. For States on the periphery of the European Union,

however, EU membership serves as a compelling inducement to enact the prerequisite regulations for membership, include those related to trade controls. As described above, initial Wisconsin Project outreach focused on countries located in or on the periphery of the EU, somewhat obviating the need to explain the value or importance of robust strategic trade controls. For States in other regions, the incentives are less apparent, and the case must be made on an ongoing basis, not just as part of outreach activities. The lasting impact of outreach activities is undermined without sustained follow-up, as discussed below.

When the Wisconsin Project is asked to engage States with a nascent strategic trade control system, the focus is on promoting knowledge and use of internationally recognized reference resources contained in the Risk Report, though they may not be legally binding on a national level. For instance, introducing officials to the EU regulation on export controls and its list of dual-use items, and to the U.S. Consolidated Screening List of parties for which the U.S. government maintains some trade-related and financial restrictions. Wisconsin Project outreach also focuses on U.N. sanctions on Iran and North Korea and on the requirements related to implementing those sanctions. For instance, both programs include a list of individuals and entities sanctioned for contributing to proliferation, a travel ban on listed individuals, and specific restrictions on trade with both countries. Training and simulation exercises are designed to show officials how the Risk Report can be used to help implement U.N. sanctions.

Finally, there may be interest in screening related to proliferation-sensitive transactions among stakeholders not traditionally included in initial strategic trade control outreach. For instance, it is useful to engage central bank, ministry of finance, or other financial regulatory authorities in States that are members of the Financial Action Task Force (FATF) or its regional bodies. These States have a responsibility not only to combat money laundering and terrorist financing, but also proliferation finance. FATF

recommendations were broadened in 2012 in order to address “new threats such as the financing of proliferation of weapons of mass destruction.”<sup>8</sup> Agencies regulating the transport sector are also relevant in early outreach efforts, particularly in States with a large volume of transit and transshipment. In addition, a number of non-governmental actors play a role in building robust controls on strategic trade and may be usefully engaged, including trade associations, research institutes, and universities. These sectors may offer a latent repository of technical expertise that could usefully inform governments developing a comprehensive strategic trade control system. Resolution 2325 of December 2016 acknowledges the value of engaging such parties.<sup>9</sup>

The Wisconsin Project has sought to engage these stakeholders in outreach to countries new to strategic trade controls. The response has been positive. Such a whole-of-government approach may help remove barriers to progress on regulatory reform, may counter reluctance by agencies traditionally responsible for trade controls and border security, or may amplify the effect of outreach to traditional stakeholders in customs and ministries of economy and trade.

## 2.2. **Outreach in States with established strategic trade control systems**

A whole-of-government outreach approach is more common in States assessed to have a well-established trade control system in place. In such States, a national list of controlled dual-use items exists, one or several agencies have official responsibility for licensing such items, and customs, border guards, and law enforcement agencies have the authority to inspect and interdict suspicious shipments, and to prosecute export control violations. The primary

---

8 “History of the FATF,” Financial Action Task Force, accessed on May 26, 2017, <http://www.fatf-gafi.org/about/historyofthefatf/>.

9 United Nations Security Council resolution 2325, S/RES/2325 (December 15, 2016), [http://undocs.org/S/RES/2325\(2016\)](http://undocs.org/S/RES/2325(2016)).

barrier to successful Wisconsin Project outreach – a lack of legal basis to integrate the Risk Report as a tool to support licensing and enforcement tasks – has been eliminated. Thus, outreach may be centered on showing officials how the Risk Report can help with these tasks, as one of several unclassified information sources.

For licensing officials, training-related outreach covers the implementation of “catch all” controls and explains how the Risk Report can be used to support such controls. Due diligence procedures in these States may be conducted to avoid supplying sensitive end users or supporting possible military end use. Entity profiles in the Risk Report describe links to military organizations or military-related work, include corporate hierarchy information so that officials may establish beneficial ownership and name related companies and persons. In addition, Wisconsin Project outreach encourages official to consult publicly available restricted party lists related to proliferation published by other governments, which are available in the Risk Report. In this way, outreach activities may reinforce knowledge sharing among governments.

Officials with enforcement-related responsibilities in these States often have developed or are developing internal risk management systems to support high volume screening and targeting. Such systems combine disparate sources of information, data mining, and the application of business intelligence techniques. They also are not exclusively focused on proliferation, but rather on identifying high risk transactions and ensuring supplying chain security. Wisconsin Project outreach seeks to integrate Risk Report data with these systems in order to ensure that they include robust screening specifically on proliferation- related risks.

Officials involved in export control-related investigations and prosecutions are an important audience for Wisconsin Project outreach as well. Investigations in these States are not often public and prosecutions remain an exception. The Wisconsin Project emphasizes the value of publicizing such work, as a demonstration of the seriousness with which a State takes such violations, and as a way

to deter similar behavior by other exporters. The well-documented, public process by which the U.S. government pursues such cases is used in outreach activities as a model. Case studies are used to illustrate both the red flags that led the government to investigate and the way in which proliferation procurement networks operate.

### 2.3. **Practical considerations in designing outreach activities**

Wisconsin Project outreach includes a combination of access to the Risk Report, director-level meetings, and instructional training activities for working-level officials in partner countries. As described above, these training activities have been undertaken since 2000 and have engaged States in an expanding geographical area and with an increasingly diverse set of responsibilities in trade controls and compliance. Based on this experience, several conclusions can be drawn that help inform Wisconsin Project outreach design and execution.

On a practical level, the format of outreach activities influences how they are received and their lasting impact. Classroom-style lectures for large audiences with dense take-away material may be appropriate for officials well-versed in trade control issues. However, this format is not conducive to novice or skeptical audiences. The Wisconsin Project generally seeks an audience of about 15 officials and, for working-level officials, a training environment that allows participants to take an active role. For an introductory Risk Report training, this includes a computer for each participant and a series of hands-on exercises conducted as a group and individually. To the extent possible, the training room is set up so that participants are facing each other and the presenter; this encourages interaction and exchange among participants who come from different agencies and may not often have the opportunity to interact with each other.

It is also important to identify and recruit appropriate officials for training, based on agency responsibilities in the State being

engaged. For instance, in some cases the intelligence agency or the ministry of foreign affairs has an explicit role in the licensing process. In some cases the investigative police play a role on the enforcement side, in other instances, border guards may be more appropriate.

The Wisconsin Project also seeks to engage office directors or managers in addition to conducting training activities. The purpose of such meetings is to establish buy-in from key officials so that they are more likely to encourage staff to integrate the Risk Report into daily work. These meetings provide an opportunity to explain the organization's background, research methods and approach, and to answer questions. Non-governmental organizations conducting outreach often must overcome reluctance, skepticism, or suspicion about their intentions from outreach recipients, and these meetings are a means of doing so.

The specific exercises or examples used during outreach activities should be adapted to the regional or threat exigencies of the State being engaged. For instance, training for export control officials in a State vulnerable to proliferation-related transit or transshipment might include case studies involving shipping or logistics firms. In States where customs has little experience with proliferation-related targeting and risk analysis, case studies involving illicit networks dealing in military and dual-use items as well as a variety of other contraband may be well received, demonstrating the frequent reliance on the same networks for different categories of illicit trade. States peripheral to the European Union would find relevant cases that relate to the implementation of EU sanctions programs.

### **3. POST-OUTREACH CHALLENGES: LASTING IMPACT, IMPROVING COORDINATION**

In addition to the challenges of organizing outreach to fit the recipient State's strategic trade control system and delivering it successfully to the appropriate audience, major challenges persist in the post-outreach phase. For non-governmental organizations like the Wisconsin Project, measurable post-outreach impact is increasingly important to funders and governing boards as a measure of how well the organization is fulfilling its mission.

The primary challenge to ensuring post-outreach impact is an extension of the challenges encountered during the design and implementation phases described above: a mismatch between the priority of the implementer and the entity funding outreach activities and the priority of the recipient State. This mismatch limits the lasting efficacy of outreach in the absence of sustained follow-on engagement, as it allows recipients to return to "business as usual."

The Wisconsin Project seeks to address this issue by building in time to engage with officials following in-country training activities. Because Risk Report credentials are assigned on an individual basis, the Wisconsin Project is able to monitor and report on volume of use by person, by agency, and by country and to conduct targeted follow up in instances of low or no Risk Report use. Each official also receives regular email communication from the Wisconsin Project, within four weeks of in-country training and every month thereafter. These messages summarize content recently added to the database, provide an update on relevant regulatory changes within multilateral supply regimes, and report on developments of interest at the national level. The Wisconsin Project has also developed a series of online videos that explain how to search the Risk Report and provide an overview of database content. These videos may be used as remote training tools, for officials who attending training but need a refresher or for new staff assigned export licensing or enforcement responsibilities. In addition, the Wisconsin Project



uses the director-level meetings to establish a point of contact for each agency that is engaged and uses this contact to keep track of and address personnel changes.

Frequently rotating personnel at the working and director level is an additional challenge to ensuring the lasting impact of outreach. Remote training options and regular engagement by email can help mitigate this challenge but do not resolve it. A “train the trainer” approach may help, in which an objective of outreach is to instruct one or several officials in a specific set of responsibilities and to ensure that these officials are capable of instructing their colleagues. Another possibility is to cultivate (including through early outreach) a well-placed, higher-level official who can serve as a “national champion” for export controls. Such a person can coordinate in-country outreach to meet national needs, drive any regulatory changes, and develop a cadre of technical experts. In States engaged by the Wisconsin Project that have such a champion, Risk Report use has been sustained over time, across multiple agencies, and despite changes in personnel brought on by elections or by bureaucratic reorganizations.

Another means of reinforcing outreach is through mentoring among States. Resolution 1540 specifically encourages this practice. Wisconsin Project outreach has benefited from having early adopters of the Risk Report inform their colleagues in newly engaged States about how to use the tool. Joint training with officials from both mentored and mentoring States is an effective way to emphasize the collaborative nature rather than the assistance aspect of outreach.

There is also the challenge of “outreach fatigue.” As part of reporting on implementation, the 1540 Committee lists outreach activities in which Committee members participated. In its most recent report, the Committee lists some 170 such activities between

May 2011 and April 2016, and this list is by no means exhaustive.<sup>10</sup> Yet a review of the seminars or conferences held speaks more to repetitive nature of outreach than to its impact. In States with a small number of officials comprising the target outreach audience, these officials may attend multiple, often similar activities in a single month. Or, to avoid this staff drain, States may elect to send less relevant staff to some outreach events, thus diluting their longer-term value.

Finally, there is a lack of coordination among implementers, which undermines individual outreach activities. The Wisconsin Project has often learned about other export control outreach when conducting its own in-country training. Greater coordination among implementers engaging a specific State could include periodic meetings to discuss messaging and goals or an online forum to share experiences about past engagement and ask questions. Such coordination would allow future outreach to capture lessons learned and to reinforce the work of other implementers. For example, best practice seminars on end user screening and identification could reference the Risk Report as a possible tool to support this work. Similarly, outreach related to commodity identification or the adoption of a national control list could point to the Risk Report as one source of information about these topics. Conversely, the Wisconsin Project could reinforce the message and tools of other implementers. This would create a virtuous circle of outreach over time and clarify and focus the overall message about the importance of export controls for the outreach recipient.

---

10 United Nations Security Council Letter dated 9 December 2016 from the Chair of the Security Council Committee established pursuant to resolution 1540 (2004) addressed to the President of the Security Council, S/2016/1038 (December 9, 2016), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2016/1038](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/1038).

# Promoting Trade and Security Objectives through a Trade Controls Outreach model

Christos Charatsis, Filippo Sevini

## 1. A CONCEPTUAL NOTE

Prior to setting our main questions, a conceptual clarification may be useful. On the one hand, dual-use trade controls as a trade measure pursuing security objectives contribute *de jure* and *de facto* to furthering both trade and security objectives. The relevant literature acknowledges the special role of dual-use trade controls in reconciling economic considerations with security and foreign policy options.<sup>1</sup> Trade controls are not the only trade instrument serving security objectives. Trade restrictive measures, the so-called sanctions, are another example of a measure having a dual-hatted role. Interestingly, sanctions can also relate directly to trade controls in cases involving the implementation of controls of dual-use items.<sup>2</sup> On the other hand, outreach activities can be helpful to universalise any given standard. The term outreach itself is somehow confusing, as it is used to describe awareness raising and capacity building activ-

- 
- 1 See, for example Kazuto Suzuki, "Between Trade and Security: EU's Export Control Regime and its Global Role," paper for EUSA Tenth Biennial International Conference, May 17- 19, 2007, Montreal, Canada; Panos Koutrakos, *Trade, Foreign Policy and Defence in EU Constitutional Law*, (Oregon: Hart Publishing, 2001); Anna Wetter, "Enforcing European Union Law on Exports of Dual-Use Goods, SIPRI Research Report: No 24, (Oxford: Oxford University Press, 2009).
  - 2 For an analysis of sanctions implementation through trade controls see the publication of the Chaudfontaine Group: Quentin Michel, Odette Jankowitsch-Prevor and Sylvain Paile-Calvo (eds.), *Controlling the Trade of Strategic Goods - Sanctions and Penalties*, Liege: European Studies Unit - University of Liege, 2016.

ities and related initiatives promoting cooperation among targeted stakeholders in both national and international settings. While this contribution primarily examines the role of outreach activities as a means of exporting trade standards to non-EU countries, we acknowledge and emphasize the interrelationship between trade and security imperatives in the context of dual-use trade controls.

In the upcoming sections, we briefly address two key questions. First, it is discussed whether trade control outreach activities represent a tool for developing trade standards. Second, it is examined whether there is a model for export control outreach activities and what actions could be taken to better articulate and reinforce the EU outreach paradigm. Our focus will be on the EU experience although most of the observations equally concern outreach programmes implemented by other donor countries and organisations.

## **2. EU OUTREACH AS A TOOL FOR SETTING TRADE STANDARDS?**

In order to answer the first question, one could look at three elements: the motivations underpinning outreach activities, the content and impact of such programmes, and statistical analysis, with a view to identifying a correlation between the implementation of outreach activities and the establishment of closer trade relations.

### **2.1. Motivations for providing and receiving export controls support**

Reducing the risk of proliferation of sensitive technologies and promoting regional security are the primary causes for implementing outreach activities in third countries. As also stated in the EU Partner to Partner Programme (P2P) web-portal, in order to strengthen international cooperation in the field of dual-use export controls (including national and regional capacity) it is necessary to take into account the balance between security and economic

considerations.<sup>3</sup> This clarification comes as no surprise given that the implementation of trade controls can substantially benefit from the establishment of a global level playing field, whereby compliance costs and trade obstacles for compliant exporters are affordable, also taking into account the foreign availability of potentially controlled goods and technologies. This is the ultimate goal for any effective dual-use trade control system. Interestingly, the interconnection between trade and security objectives implies that countries with limited or no experience in implementing trade controls may be ready to invest in export controls upon the condition that this will lead to a closer trade relationship with a given country or community of countries enabling, for example, the country to host subsidiary branches and factories of foreign companies. The same also applies for countries that have a robust trade control system in place and aspire to strengthen collaboration with each other.

As an extremely powerful global trade actor, the EU has ample leverage in that regard. Indeed, the EU negotiates (as per its Common Commercial Policy and in accordance with the WTO rules) a variety of trade agreements such as:<sup>4</sup>

1. Trade agreements on the basis of Article 207 of the Treaty on the Functioning of the EU (TFEU) that can be preferential or non-preferential in kind;
2. Trade and economic cooperation agreements (preferential access to EU market, free trade areas, cooperation) under Article 207 TFEU in combination with another Article (usually Article 218) granting trade preferences and assistance on the basis of political conditions (e.g. human rights and rule of law);

---

3 EU P2P webpage on Export Control Programme for Dual-Use Goods: <https://export-control.jrc.ec.europa.eu/Home/Dual-use-trade-control>.

4 Neil Nugent, *The Government and Politics of the European Union* (Basingstoke: Palgrave Macmillan, 2010), 372-375.

Association agreements under Article 217 TFEU establishing an association involving reciprocal rights and obligations, common actions and special relations such as those with Turkey, Western Balkans and the members of the European Economic Area (EEA).

In addition to these types of trade agreements, the EU provides preferential access to its common market in the framework of its development policy (under Article 298 TFEU) seeking to eradicate worldwide poverty in a context of sustainable development. The enhanced EU's position in negotiating trade agreements, coupled with an ever expanding and politicised trade agenda, means that a number of non-strictly trade issues feature in trade talks.<sup>5</sup> Such issues include safety and security standards, labour standards, environmental obligations, human rights and interestingly, non-proliferation imperatives. This joined-up approach in negotiating trade agreements has been consolidated as an important aspect of the Union's external relations in general. Indeed, the recently adopted Global Strategy for the EU's Foreign and Security Policy stresses that a political economy of peace requires an integrated approach, including a modernised policy on export controls for dual-use goods.<sup>6</sup> Supporting cooperative regional orders and deepening tailor-made partnerships are further important elements complementing EU's external strategy related to trade objectives.

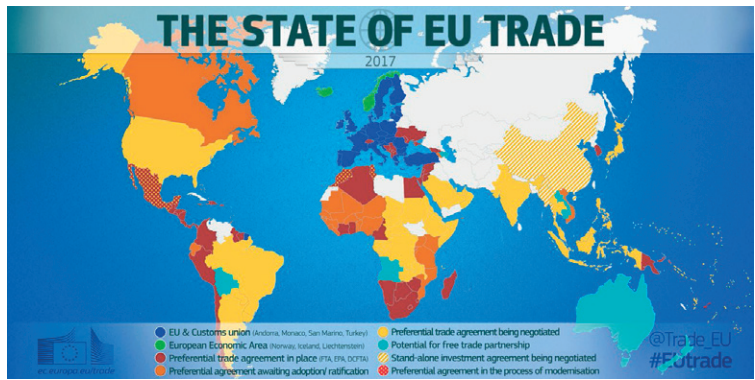
---

5 Ibid, 372.

6 EU, "Global Strategy for the EU's Foreign and Security Policy," June 2016, 31-32.

Figure 1

The State of EU Trade Agreements in 2017\*



\* Illustration from the DG Trade website, available in: <http://ec.europa.eu/trade/policy/countries-and-regions/agreements/>.

However, the extent to which the EU uses its relevance as a trade actor to achieve non-proliferation goals is unclear. The inclusion of the “WMD clause” in trade agreements may offer some leverage for requiring the prior assumption of commitments including the enactment of export control legislation and the enforcement of controls. That being said, different contributions during the Chaudfontaine seminar pointed to the limited effectiveness of the WMD clause so far in that regard.

Nevertheless, exporting and importing in conformity with internationally accepted standards and best practices is in the interest of both the EU and the recipients of outreach activities. On the one hand, from an economic perspective, the EU and its exporters wish to open up new markets for their products and services on the condition that certain security and economic guarantees are satisfied. On the other hand, recipient countries are willing to adhere to international norms and control lists defined by international export control regimes, enjoying also the economic privileges that

such an embracement can bring. This is particularly evident in the nuclear trade and cooperation. India's request to join the Nuclear Suppliers Group is a relevant example in that respect.

## 2.2. **The scope and content of outreach activities**

The second element under probation is the scope and coverage of the dual-use outreach activities. With the P2P programme, the EU seeks to export its "*acquis communautaire*" with regards to trade controls, which is none other than the dual-use regulation. As A. Van der Meer pointed out in the Chaudfontaine conference, the regulation and especially the EU list is the heart-piece of this "*acquis*". This is a reasonable approach. Setting common standards presupposes a common agreement on how to trade responsibly, and the EU regulation plays such a role all the more given that most of the principles and controls set in the regulation have been agreed in the framework of international regimes. Indeed, the EU offers a regional yet *sui generis* approach to building trade controls that can be of extra value for partner countries and regions concerned. For instance, the EU approach allows for some degree of flexibility and diversity in implementing trade controls nationally. Importantly, the implementation of EU outreach activities concerns all different trade control aspects and stakeholders involved promoting thereby common standards in trading and complying with the rules. Practically speaking, this means that the EU paradigm contributes not only to setting up - to the extent possible - effective legal frameworks and working mechanisms for enforcing controls but also it promotes indirectly common standards for exporters such as industry and academia.



What needs to be clarified is how the EU shares its model with its partners.<sup>7</sup> The EU Global Strategy for Foreign and Security policy provides some inspiration on the right way to do so: “we will not strive to export our model, but rather seek reciprocal inspiration from different regional experiences”.<sup>8</sup> In the same fashion, the P2P Programme does not seek to impose the EU trade control paradigm as a model to be followed invariably. Instead, it identifies jointly with the recipient countries unaddressed issues and needs, and provides solutions on the basis of EU best practices and experiences. Logically, the establishment of norms, best practices and guidance negotiated and agreed in an international setting such as in the framework of the export control regimes or as an initiative of the UN Resolution 1540 Committee could be of help to so-called outreach activities. The role of other international organisations having a bearing for export controls and being in position to set internationally refereed standards such as the WCO is also of relevance here.

### 2.3. **Tracking the relationship between trade and outreach?**

The contribution of outreach activities to setting trade standards can also be evaluated on the basis of statistical analysis, looking at the ex post outcome of outreach activities. Does the conduct of outreach activities lead to closer trade relations between donor and recipient countries? In essence, this question relates to the question of whether trade controls represent a condition for developing closer trade relations with third countries. Exploring such a question is a complex exercise for several reasons. If the scope of the exercise is broader and concerns trade in general, then it may

---

7 On the usefulness of the EU system as a standard for main aspects of trade controls (licensing, enforcement, awareness of main actors and sanctions) see: Sylvain Païle-Calvo, “EU Regulation + French Regulations = An Exportable Control Model?” in *Modelling Dual-Use Trade Control Systems*, ed. Odette J. Prevot, Sylvain Païle-Calvo and Quentin Michel (Brussels: P.I.E. Peter Lang, 2013), 211-219.

8 Global Strategy for the EU's Foreign and Security Policy, 32.

be feasible to make comparisons concerning the volume of trade before and after the conduct of trade controls outreach. However, such an approach is too broad. If one focuses on data concerning solely dual-use trade, it can be difficult to get accurate estimates due to discrepancies between dual-use codes and Harmonised System customs codes, although an assessment with expected uncertainty is possible.<sup>9</sup>

Verifying whether there is a correlation between increased trade relations and the conduct of outreach activities is also subject to another limitation. The selection of eligible countries for export controls outreach is done on the basis of a number of factors -- definitely security- and political-related ones--; thus, enhancing economic cooperation in dual-use trade is not always the primary objective served by an outreach activity.<sup>10</sup>

### **3. NECESSARY ELEMENTS FOR DEVELOPING AN OUTREACH MODEL**

The second key objective for this contribution concerns the definition of a model for conducting outreach activities for trade controls. In doing so, we will draw inspiration from the current implementation of the EU P2P Programme highlighting elements that work well and aspects that need improvement. First of all, two clarifications are pertinent here. First, the term ‘model’ can be understood as a flawless reference standard with universal acceptance. Nonetheless, there is no perfect model for trade control outreach

---

9 For an overview of the issues concerning the correlation between customs codes and dual-use codes see: Renaud Chatelus and Pete Heine, “Improving the Integrity of the Global Supply Chain: Working with Compliant Business Partners,” *Strategic Trade Review* 3 (2016): 43-67;

Hyuk Kim, “Enhancing the Interface between the Harmonized System and Strategic Trade Controls,” *Strategic Trade Review* 3 (2016): 69-84.

10 For example, under the EU P2P programme some South-East Asian countries were proposed as cooperation partners for their regional role or because they are located on strategic trade routes, rather than the relevance of their trade volume.

activities as there is no “one-size fits all” model for implementing trade controls. That said, the EU list seems to represent a universal standard, or at least the basic synopsis of applicable dual-use controls used also by Americans and other outreach implementers. Second, the literature dealing with outreach activities for trade controls is very limited and research in this field relies primarily on insights from practitioners conducting or being subject to export controls outreach. Therefore, the analysis below attempts to define main elements for establishing and implementing outreach activities relying mainly on previous EU experience in this area.

#### **4. A STRATEGY FOR OUTREACH ACTIVITIES**

The EU’s cooperation programme on trade controls began in 2004 with only four members from South East Europe and has recently expanded to include thirty-two countries spanning six regions and three continents. Regardless of the size and scope of any outreach programme, defining a clearly articulated strategy responding to basic questions, such as what are the main principles and purposes to be promoted and in what ways is a *sine qua non* for going any further. In the EU, the main objective of the P2P Programme (to strengthen international cooperation and effectiveness in the field of export controls) is founded on EU strategies, action plans and ensuing laws, notably the dual-use regulation. In that view, the EU Security Strategy, the EU Strategy against the Proliferation of Weapons of Mass Destruction of 2003 and the recently adopted Global Strategy for the EU’s Foreign and Security Policy define the overall objectives of the EU, both as non-proliferation actor and global provider of cooperative support.<sup>11</sup> These

---

11 EU Council, “EU Security Strategy - A Secure Europe in a Better World,” Brussels, 12 December 2003;  
EU Council, “EU Strategy against Proliferation of Weapons of Mass Destruction,” Brussels, 10 December 2003.

policy and legal texts reflect *inter alia* international non-proliferation commitments undertaken by the EU Member States pursuant to resolution 1540 and norms set in the framework of export control regimes. More broadly, given the blend of economic and security objectives that are of relevance to trade controls, the EU's outreach programme is designed in accordance with and in furtherance of the EU's Common Commercial Policy (CCP) and Common Foreign and Security Policy (CFSP).

Likewise, the implementation of an outreach programme must evolve in accordance with all related policies and implementing instruments of the donor country or organisation. This approach has an added value for the coherence, comprehensiveness and credibility of the outreach programme as a whole. For example, in our test case, the P2P Programme is funded under the Instrument contributing to Security and Peace (IcSP)<sup>12</sup> and it is integrated to another major EU initiative in the area of international cooperation and development, the EU Chemical, Biological, Radiological and Nuclear (CBRN) Centres of Excellence Risk Mitigation Initiative, initiated in 2010.<sup>13</sup> In this context, the EU export control outreach strategy should match and build upon all relevant EU security and economic strategies and instruments, since they all contribute to a synergetic framework of collaboration partnership for development and cooperation.

Apart from incorporating main principles and defining main purposes, an outreach project requires setting overall and specific

---

12 The IcSP is an EU instrument to support security initiatives and peace-building activities in partner countries. It was established in 2014 to take over from the Instrument for Stability (IfS). Part of the EU's new generation of instruments for financing external action, the IcSP focuses on crisis response, crisis preparedness, conflict prevention and peace-building. Information retrieved from: [http://ec.europa.eu/dgs/fpi/what-we-do/instrument\\_contributing\\_to\\_stability\\_and\\_peace\\_en.htm](http://ec.europa.eu/dgs/fpi/what-we-do/instrument_contributing_to_stability_and_peace_en.htm); See also: EU Regulation No 230/2014 Establishing an Instrument Contributing to Stability and Peace, Brussels, 11 March 2014.

13 The CBRN CoE initiative supports, at national and regional levels, the reinforcement of the institutional capacity needed to fight against CBRN risks posed due to criminal, accidental and natural reasons. For additional information see: <http://www.cbrn-coe.eu/>

objectives for targeted countries and regions. Moreover, export control capacity building and cooperation activities need to be underpinned by robust management processes ensuring the effectiveness, sustainability and structured provision of assistance to beneficiaries. The progress towards the implementation of the objectives should follow the main principles of the project management cycle requiring proper planning, implementation, evaluation and adjustment of the programme on the basis of successes and shortcomings.<sup>14</sup>

## **5. DEFINING A PROCESS FOR IDENTIFYING ELIGIBLE COUNTRIES**

An outreach strategy needs to be underpinned by a set of criteria or a methodology for selecting target countries or group of countries, as well as an action plan setting specific activities to be taken in those countries. The EU's experience in implementing export controls outreach programmes is again enlightening. Over the years, the selection of partner countries has taken place on the basis of different criteria and priorities. However, one set of factors have persistently shaped the selection process: security and geo-political considerations.

Security issues potentially threatening the international stability are key factors to consider when deciding on priority countries. Recent issues and crises may require immediate action and hence they can also force a cooperation programme to adjust priority countries due to recently identified non-proliferation concerns. In the EU, the CFSP conclusions summarised in the Council Working

---

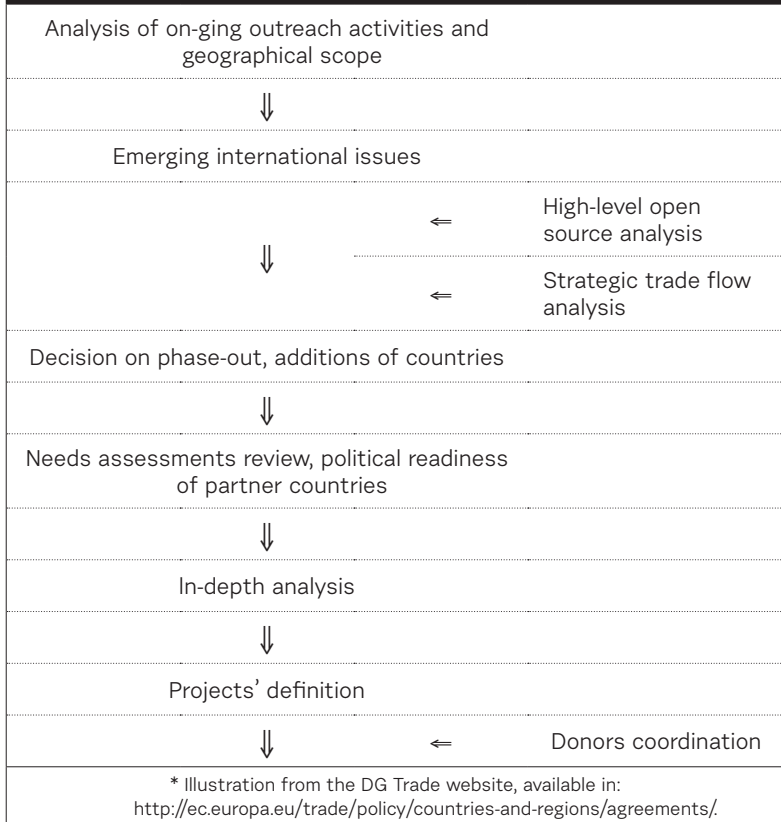
14 The Plan-Do-Check-Act (PDCA) cycle was originally developed by Walter Shewhart in 1940s, and it was popularized in 1950s by W. Edwards Deming. For an analysis of the evolution of the PDCA Cycle see: Ronald Moen and Clifford Norman, "Circling Back: Clearing up myths about the Deming cycle and Seeing How it Keeps Evolving," Quality Progress, American Society for Quality, 2010, retrieved from: <http://www.westga.edu/~dturner/PDCA.pdf>.

Party on Non-Proliferation (CONOP) reports may indicate priority and no-go countries. In terms of geopolitics, strategic issues such as the supply routes of raw materials and energy security or the existence of important transit and transshipment hubs can point to priority countries as well.

Overall, the selection of eligible partner countries is always the product of a complex process weighing a number of factors. Importantly, the existence of close political and economic relations has a value for both defining main countries of interest and providing entry points for contacting such countries and establishing export controls cooperation on the basis of a positive and fertile background.

**Figure 2**

**A methodology for selecting priority countries**



There is a variety of approaches in defining eligible countries for export control outreach activities. It is known for instance, that the US relies on a very comprehensive list of indicators against which they assess and identify eligible countries. The methodology spelled out in figure II includes all the key components that should be included in the decision-making process by donor countries/organisations to take up cooperation or, if necessary, suspend such efforts in eligible or recipient countries. In the first phase, the meth-

odology takes note of the progress achieved through outgoing and past outreach projects in partner countries including lessons learned. The first phase includes also a high-level analysis of a country's non-proliferation credentials, importance in terms of strategic weight (security, economic and political relations) and relevance to dual-use trade. For example, in the EU context, a country that is part of the EU's Neighbourhood Policy or a prospective member of the Union can possibly be placed higher among the priority countries for cooperation. Another example concerns the case of countries that do not constitute important trade partners in terms of exports/imports, but are crucial from a proliferation point of view because of their importance as transit and transshipment hubs or as known diversion points.

In the second phase, as long as a first selection of countries has taken place, a subsequent evaluation will assess the readiness of an eligible country to engage in cooperation and outreach activities. This second evaluation may examine whether, for instance, required institutions and other necessary conditions such as willingness by a country's government and a sustainable security level are in place for establishing or stepping up export controls cooperation. The last phase requires giving due consideration to the needs of the partner countries as identified in the joint preparation of the projects. In the EU, the needs assessment review taking place under the framework of CBRN CoEs Initiative concerns also export control aspects and hence represents a valuable source of information. In addition to this, taking stock of parallel activities by other outreach providers and coordinating with them is also a relevant action in this phase. For example, the EU and the US organise meetings to coordinate their efforts and inform each other on the progress of their outreach activities. In fact, there are instances where they also organise joint events for partner countries. A last remark concerns the delineation to groups of countries in accordance to their needs and state



of play of their export control system. In the EU for instance, the designation of eligible countries is based on a three-level grouping for start-up, intermediate and advanced countries.

## **6. SETTING AN ACTION PLAN FOR PARTNER COUNTRIES**

The establishment of cooperation and the provision of assistance need to be done in a structured way and along clearly defined objectives for partner countries. In this regard, the EU P2P Programme has developed a basic methodology that can be of help for the definition of main and specific objectives at the beginning of a project, as well as for its constant evaluation on the basis of such objectives throughout the lifetime of a project. The so-called 3WH (why, who, what and how) approach follows a logical sequence in which key steps are defined from the first contacts with a partner country in order to lay the groundwork for producing results.<sup>15</sup> In practical terms, the “why” aspect examines ways for raising awareness, clarifying motives and gaining as high level support as possible from a partner country. It also demands the active involvement of the concerned country’s authorities in acquiring a full view on why export controls are important and relevant to them. The “who” aspect aims at identifying relevant stakeholders and, among them, organisations/institutions that presently champion or could potentially further export controls in a given country or region. The “what” parameter concerns export control aspects that are relevant to the specific profile of the country or require improvement. For instance, a country may lack experience in enforcing transit and brokering controls or it might be weak in designing effective export control regulations. Finally, the “how”

---

15 For an introduction to the logic underpinning the 3WH methodology see: Odette Jankowitsch-Prevor, Quentin Michel, Sylvain Paile-Calvo (eds.), *Modelling Dual-Use Trade Control Systems*, (Brussels: Peter Lang, 2014), 251-257.

aspect intends to set specific initiatives (seminars, trainings, etc.) tailored to the needs and the profile of the country in question as identified in the previous phases.

## **7. CONCLUSION: WHAT ABOUT LESS OBVIOUS OR MISSING ELEMENTS?**

The foregoing section presented the fundamental elements for conducting outreach activities in a structured and systematic way. Clearly, there are several other important elements to look at when designing, implementing and assessing an outreach programme such as:

1. Quality of material and online tools offered by donor countries;
2. Feedback and evaluation provided by the recipient countries after the conduct of an activity;
3. Domestic reporting mechanisms and tracking for assessing the progress of a country's export control efforts towards commonly defined objectives;
4. Ways to engage stakeholders and ensure the sustainability of the projects;
5. Indicators for measuring the overall progress of a project.

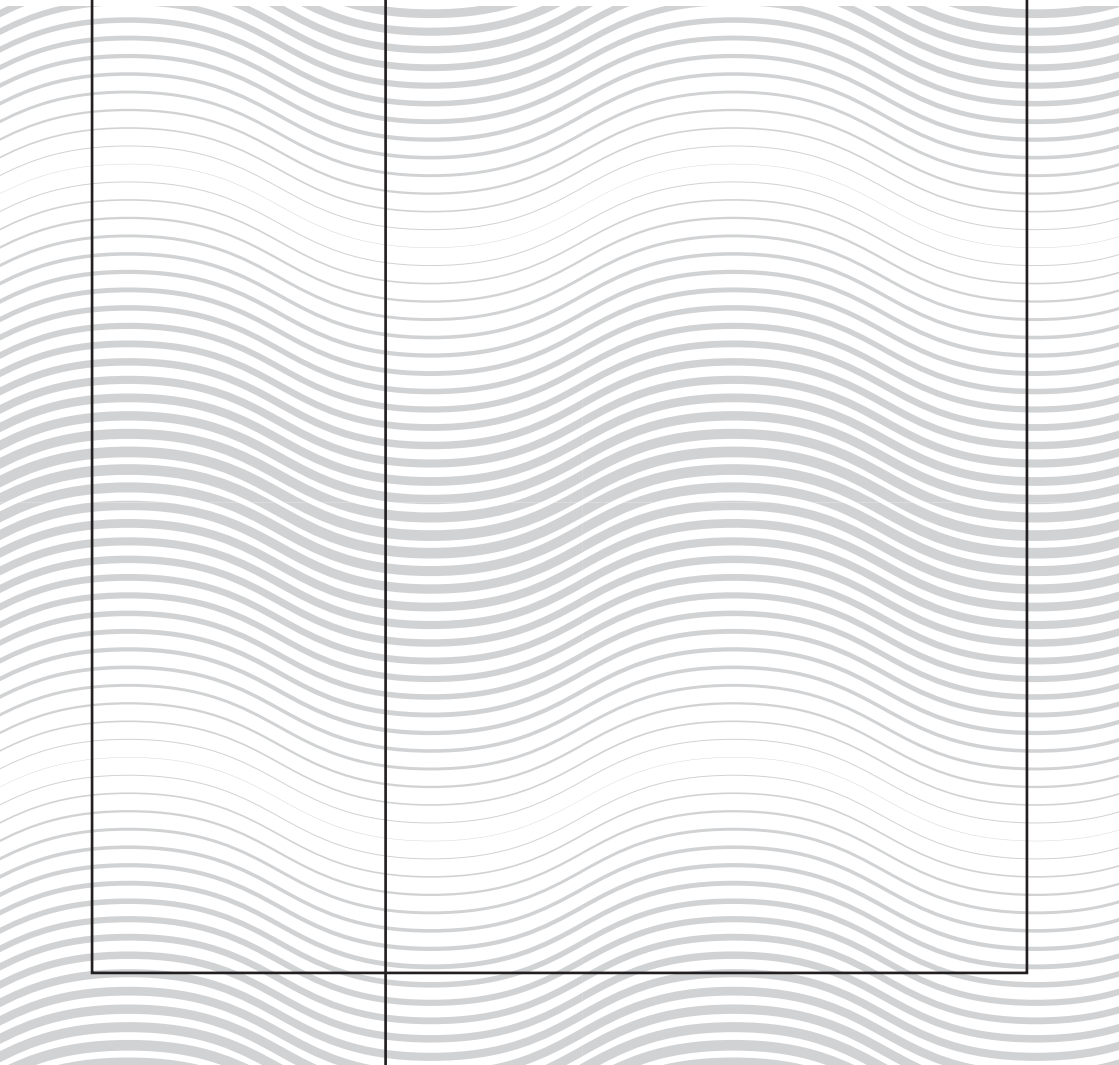
In addition, it is particularly important to conceive and adopt an effective communication strategy in furtherance of the main elements identified above and of the specific objectives set for a given project. Such a strategy could provide incentives and information to identified stakeholders, increase the visibility of an outreach programme within a target country and beyond, as well as clarify misconceptions about trade controls in general and the conduct of outreach activities in particular. While an effective communication strategy requires avoiding a prescriptive approach, it should find

ways of boosting the reciprocal exchange of information and the definition of main objectives on an equal footing with the recipient countries. A sound communication strategy from the very beginning can also contribute to better approach a country, and it is therefore important for it to be tailored to the targeted country's profile. Publicising the added value and the results of an outreach activity or project could further increase the status and acceptability of export controls and the non-proliferation cause within the country itself and more broadly.



**Part  
3.**

**Trade and  
security  
in the outreach  
activities**





# Looking for the correlation between EU international trade policy and its dual-use export controls outreach programme: the WMD clause coherence

Lia Caponetti

*European Studies Unit, University of Liège (Belgium)*

This contribution aims at identifying a correlation between the European Union (EU) international trade policy - limited in this contribution to mixed agreements between the EU and third countries - and the dual-use export controls outreach programme implemented by the EU, called *P2P (Partner to Partner) export control programme for dual-use goods* (P2P).<sup>1</sup>

In a first place, preliminary definitions will be set out to clarify what it is meant by mixed agreements and to identify the geographical scope of both variables: EU mixed agreements signed/being negotiated worldwide and third countries part of the EU P2P programme.

It will follow and an analytical comparison which, by overlapping the geographical scope of the two variables, will look for countries part of the P2P which have also signed a trade agreement (TA) with the EU. At this stage of the analysis, the inclusion of a

---

1 P2P is the EU Outreach Export Control programme, started in 2004 and renamed P2P only in February 2016. The programme is divided into three pillars: Dual-Use Export Controls programme; Council Working Group on Conventional Arms Exports Outreach Programme; and the Arms Trade Treaty Outreach Project. For more information, please see the *EU P2P Export Control Programme* official website, available on: <https://export-control.jrc.ec.europa.eu>.

WMD non-proliferation clause in these agreements will be inquired as proof of coherency between EU international trade policy and export controls priorities. The inclusion or non-inclusion of the WMD non-proliferation clause, as well as the date of the agreements will be considered as tools seeking to identify the underlying logic driving the (co)relation between EU international trade and its dual-use export controls programme.

The last part of the paper will seek to test the correlation in practice, by comparing the outcomes of the P2P in two different countries, Kazakhstan and Jordan.

The final aim of the analysis is the identification of the independent variable, which means to answer the question: is EU international trade policy serving dual-use export controls' objectives or is it the opposite?

Finally, some concluding remarks will make some considerations on the nature of the relation between trade and export controls and will advance some advises for ways forward.

## **1. PRELIMINARY DEFINITIONS**

The conclusion of trade agreements with third countries is one of the main and most important parts of the EU external trade policy.

According to the content of the agreement and, by consequence, the procedure for negotiation and approval, it is possible to distinguish between two categories of EU international trade agreement:

1. Union-only agreements;
2. Mixed agreements.

While Union-only agreements cover matters following under EU exclusive competences (e.g. competition policy, trade dispute settlement mechanisms, technical barriers to trade, etc.), mixed



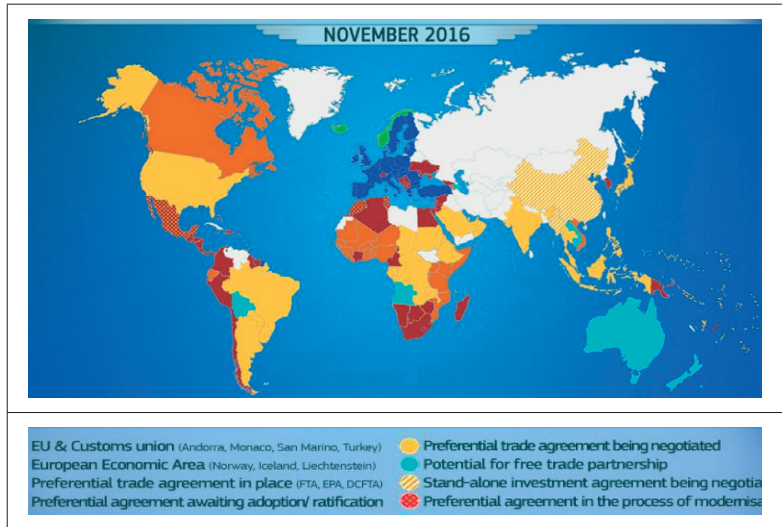
agreements include also elements which are not of EU exclusive competence, notably political issues falling within Common Foreign and Security Policy (CFSP).

As for procedural rules, while Union-only agreements are adopted by the Council usually by qualified majority vote, mixed agreements, as established in Article 218 of the Treaty on the Functioning of the European Union, require the consensus in the Council, the approval by the European Parliament and the ratification by all Member States, following their constitutional procedures.

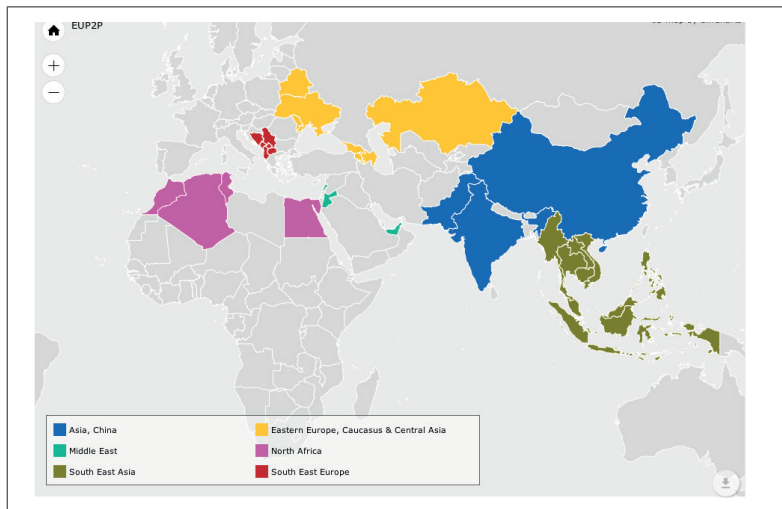
Every EU agreement including conditionality clauses, such as the human rights clause or the WMD non-proliferation clause is a mixed agreement. Given the necessity to inquire on the inclusion/exclusion of the WMD non-proliferation clause in agreements signed with countries part of the P2P programme, this paper will deal only with mixed agreements. It is not the objective of this contribution to make a complete overview on the number and nature of all the international agreements signed by the EU, being the focus of this brief analysis limited to agreements signed with countries part of the P2P programme. However, it could be useful to have a visual idea of EU trade agreements reach, which is worldwide, as shown in the map below.<sup>2</sup>

---

2 Source: European Commission, DG Trade. Available on [http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc\\_149622.pdf](http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149622.pdf).



As for the geographical scope of P2P export control programme for dual-use goods, it involves 32 countries, divided into six main regions:



<b>Asia-China</b>	China
	India
	Pakistan
<b>Middle East</b>	Jordan
	Lebanon
	United Arab Emirates
<b>South East Asia</b>	Brunei
	Cambodia
	Indonesia
	Laos
	Malaysia
	Myanmar
	Philippines
	Thailand
	Vietnam
<b>Eastern Europe, Caucasus and Central Asia</b>	Armenia
	Azerbaijan
	Belarus
	Georgia
	Kazakhstan
	Moldova
	Ukraine
<b>North Africa Egypt</b>	Algeria
	Morocco
	Tunisia
<b>South East Europe</b>	Albania
	Bosnia H.
	Kosovo
	Macedonia
	Montenegro
	Serbia

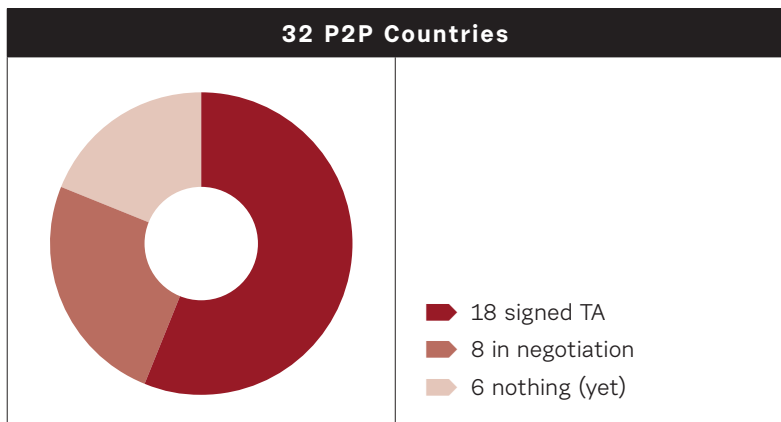
## 2. ANALYTICAL COMPARISON

Considering the 32 countries part of the P2P, the analysis aims at identifying how many of these countries signed a trade (mixed) agreement with the EU and among the considered agreements, how many contain the WMD non-proliferation clause.

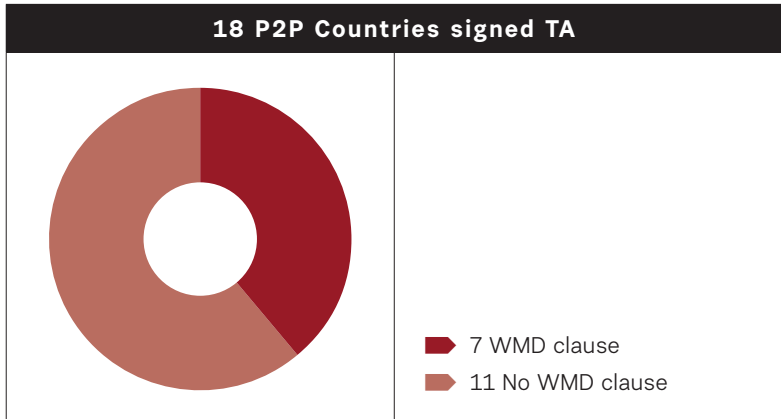
It comes out that 18 out of 32 P2P countries signed a trade agreement with the EU: Albania, Algeria, Armenia, Azerbaijan, Bosnia Herzegovina, Egypt, Georgia, Jordan, Kazakhstan, Kosovo, Lebanon, Macedonia, Moldova, Montenegro, Morocco, Serbia, Tunisia and Ukraine.

As for the remaining 14 countries, 8 out of 14 are in negotiation phase (China, India, Indonesia, Malaysia, Myanmar, Philippines and Thailand) and for the 6 remaining countries, discussions have not started yet, at least officially (Belarus, Brunei, Cambodia, Laos, Pakistan and United Arab Emirates).

The situation of the 32 P2P countries a regard to the signing of trade agreements (TA) with the EU is summed up the graph below.



Within the 18 trade agreements signed, only 7 contain a WMD non-proliferation clause: Albania (May 2006), Montenegro (April 2010), Bosnia Herzegovina (June 2015), Ukraine (January 2016), Kazakhstan (April 2016), Georgia (July 2016) and Moldova (July 2016).



Despite the fact that 11 agreements do not contain any WMD non-proliferation clause, it is worth to consider these agreements by paying attention to the date of their entry into force: Algeria (Euro-Med A. 2005), Armenia (Sept. 1999), Azerbaijan (September 1999), Egypt (June 2004), Jordan (May 2002), Kosovo (April 2016), Lebanon (March 2003), Macedonia (April 2004), Morocco (March 2000), Serbia (September 2013) and Tunisia (March 1998).

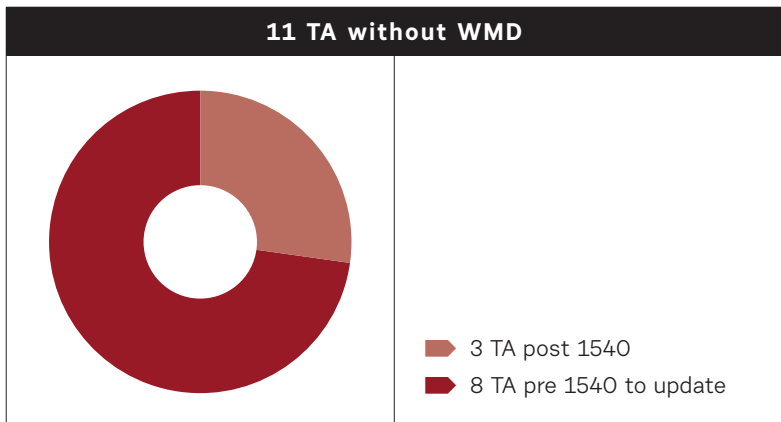
It is quite interesting to remark that 8 out of 11 agreements, which do not contain any WMD non-proliferation clause, entered into force before the entry into force of the United Nations Security Council Resolution 1540 of 28 April 2004 (UNSCR 1540).<sup>3</sup>

Indeed, Resolution 1540 acted as a watershed in the recent history of international relations, especially for dual-use items export

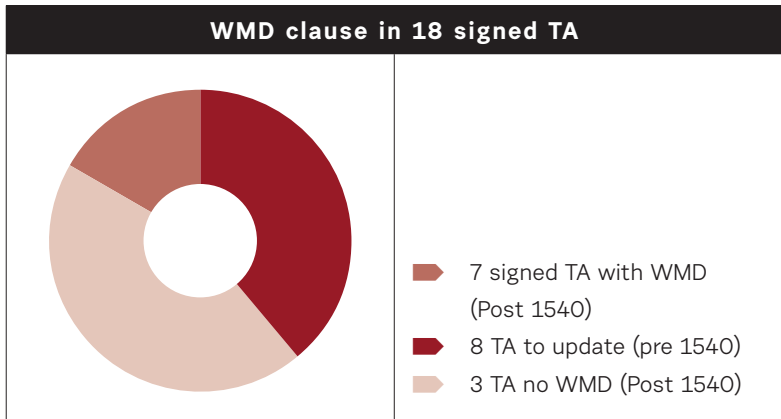
3 United Nations Security Council Resolution 1540, S/RES/1540 (2004), 28 April 2004. Available on: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/1540%20\(2004\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1540%20(2004)).

controls. It can be argued that the implementation of export controls for security reasons became an issue after the entry into force of the resolution. Furthermore, given the legal force of the resolution, adopted under Chapter VII of the United Nations Charter, a sort of international duty/right to establish trade controls was born. UNSCR 1540, in fact, imposes binding obligations on all States to

Under this perspective, the non-inclusion of a WMD non-proliferation clause in trade agreements preceding the entry into force of Resolution 1540 is understandable. Following this logic, only 3 out of the 11 agreements represent an exception: Algeria (September 2005), Serbia (September 2013) and Kosovo (April 2016).



This WMD non-proliferation clause logic could be confirmed by the fact that the 8 trade agreements signed before the entry into force of Resolution 1540 are all in negotiation phase to be updated.



It is worth to notice that the wording, as well as the position of the WMD non-proliferation clause in the trade agreement is more or less the same, at least for the agreements analysed in this paper.

As for its position in trade agreements, the clause is always included under the political dialogue section, under a provision which varies from article 8 to article 11 (see below).

An example on the wording of the WMD non-proliferation clause is provided below. (From the Association Agreement between the EU and Georgia, entered into force on July 2016)<sup>4</sup>

---

<sup>4</sup> ASSOCIATION AGREEMENT between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, *Official Journal of the European Union*, OJ L 261/4 of 30/08/2014.

**ARTICLE 10**

**Weapons of mass destruction**

1. The Parties consider that the proliferation of weapons of mass destruction (WMD) and their means of delivery, both to State and non-State actors, represents one of the most serious threats to international peace and stability. The Parties therefore agree to cooperate and to contribute to countering the proliferation of WMD and their means of delivery through full compliance with, and national implementation of, their existing obligations under international disarmament and non-proliferation treaties and agreements, and other relevant international obligations. The Parties agree that this provision constitutes an essential element of this Agreement.
2. The Parties furthermore agree to cooperate and to contribute to countering the proliferation of WMD and their means of delivery by:
  - (a) taking steps to sign, ratify, or accede to, as appropriate, and fully implement, all other relevant international instruments; and
  - (b) establishing an effective system of national export controls, controlling the export as well as transit of WMD-related goods, including a WMD end-use control on dual-use technologies, and containing effective sanctions for breaches of export controls.
  - The Parties agree to address these issues in their political dialogue.



Trade agreements pre-UNSCR 1540 without WMD non-proliferation clause:

1. **Armenia**, Partnership and Cooperation Agreement, 9 September 1999 (Negotiations started in 2015 to enhance the agreement)
2. **Azerbaijan**, Partnership and Cooperation Agreement, 17 September 1999 (Negotiations foreseen to enhance the current agreement, but not scheduled yet)
3. **Jordan**, Euro-Mediterranean Agreement, 1 May 2002 (Negotiations started in 2012 for a DCFTA<sup>5</sup>)
4. **Egypt**, Euro-Mediterranean Agreement, 1 June 2004 (in 2013 dialogues started to enhance the agreement into a DCFTA)
5. **Lebanon**, Interim Agreement, 1 March 2003
6. **Morocco**, Association Agreement, 1 March 2000 (in 2013 launch of negotiations for a DCFTA)
7. **Tunisia**, Euro-Mediterranean Agreement, 1 March 1998 (negotiations started in 2015 to launch a DCFTA)
8. **Macedonia**, Stabilisation and Association Agreement, 1 April 2004

---

5 DCFTA: Deep and Comprehensive Free Trade Agreement.

Trade agreements post-UNSCR 1540 (with WMD non-proliferation clause + 3 exceptions):

1. **Ukraine**, Deep and Comprehensive Free Trade Agreement, 1 January 2016 and - Association agreement - 29 May 2014: Art. 11.2(b) WMD non-proliferation clause and export controls
2. **Moldova**, Association agreement, 1 July 2016: Art. 9.2(b) WMD non-proliferation clause and export controls
3. **Georgia**, Association agreement, 1 July 2016: Art. 10.2(b) WMD non-proliferation clause and export controls
4. **Albania**, Stabilisation and Association Agreement, 27 May 2006: Art. 8.3 WMD non-proliferation clause and export controls
5. **Bosnia and Herzegovina**, Stabilisation and Association Agreement, 1 June 2015: Art. 10.3(b) WMD non-proliferation clause and export controls
6. **Kosovo**, Stabilisation and Association Agreement, 1 April 2016: No reference to WMD non-proliferation clause nor export controls
7. **Montenegro**, Stabilisation and Association Agreement, 29 April 2010: Art. 10.3(b) WMD non-proliferation clause and export controls
8. **Serbia**, Stabilisation and Association Agreement, 1 September 2013. No reference to WMD non-proliferation clause nor export controls
9. **Algeria**, Euro-Mediterranean Agreement, 1 September 2005: No reference to WMD non-proliferation clause nor export controls
10. **Kazakhstan**, Enhanced Partnership and Cooperation Agreement, 30 April 2016: Art. 11(a) WMD non-proliferation clause and export controls

### 3. CORRELATION IN PRACTICE: KAZAKHSTAN VERSUS JORDAN

Before entering in the core of the case-studies analysis, it is worth to keep in mind the selection criteria, applied by the EU, to propose countries to be part of the P2P programme.

The first criterion is the relevance of the “targeted” country for the EU security and foreign policy. On this basis, considering EU security and foreign policy priorities is possible to identify a list of potential candidate countries. As example, in the EU Global Strategy<sup>6</sup>, some strategic regions are identified as partners to *further develop human rights-compliant anti-terrorism cooperation* (North Africa, the Middle East, the Western Balkans and Turkey).<sup>7</sup>

The second criterion is the importance of the country as EU trading partner. The more there are trade exchanges between countries, the more these will be willing to cooperate on other policies.

Dealing with a very specific sector of trade that is dual-use goods export controls, the industrial structure of the country, with capacity in trade in dual-use items (as exporter, importer, trade facilitator, trading hub) is very relevant as well.

The above listed criteria are crosschecked with the complementarity to other EU funded projects. In other words, the EU is more willing to cooperate with countries which are already partners/beneficiaries of other EU instruments, such as Instrument for Nuclear Safety Cooperation, the Instrument for Pre-Accession Assistance or other foreign policy instruments.

Last but certainly not least, while looking for partner countries, the EU has to consider the third country’s willingness to cooperate in the area of dual-use export controls.

---

6 *Shared Vision, Common Action: A Stronger Europe A Global Strategy for the European Union’s Foreign And Security Policy*, June 2016, available on: <https://europa.eu/globalstrategy/en/global-strategy-foreign-and-security-policy-european-union>.

7 *Shared Vision, Common Action: A Stronger Europe A Global Strategy for the European Union’s Foreign And Security Policy*, June 2016, p. 21.

In order to test the correlation, on the basis of concrete results achieved during the implementation of dual-use outreach activities, two countries part of the P2P programme are considered: Kazakhstan and Jordan.

The choice of these two countries as case-studies for this paper is explained by their different status as regard the inclusion of the WMD non-proliferation clause in trade agreements with the EU. The trade agreement between the EU and Jordan was signed before the entry into force of Resolution 1540 and it does not include any provision on the WMD non-proliferation clause, while the agreement with Kazakhstan, being signed after the entry into force of the Resolution, does. The first objective of the correlation test is to inquire if the inclusion/exclusion of the clause in trade agreements makes any difference in terms of results achieved. The second objective of the test is to make an evaluation on the impact of EU's outreach activities in the area of dual-use trade controls.

Kazakhstan and Jordan have both a strategic relevance to the EU, although for different reasons. The cooperation between the EU and Kazakhstan started in 19991 and was recently renewed, in April 2016 with the signing of an Enhanced Partnership and Cooperation Agreement (EPCA). Kazakhstan is a EU's key energy supplier and world's leading uranium producer, two elements filling up the first selection criteria above-mentioned. It is also a key trading partner for China, Russia and Ukraine, all countries having a strategic importance for the EU for both economic and political reasons. Furthermore, Kazakhstan is member of the Russian-Kazakh-Bielorussian customs union, a fact which *per se* might appear as negligible, but indeed opens up the possibility to think about a dual-use trade control system between countries not part of an integration process (such as the EU). Finally, Kazakhstan is part of the Nuclear Suppliers Group (NSG) and of the Zangger Committee.

On the other side, Jordan signed a Euro-Mediterranean Agreement in May 2002, although the preparatory process for launching negotiations of a Deep and Comprehensive Free Trade

Area (DCFTA) has already started. Jordan has a strategic geo-political location for the Middle-East Region and its main trading partner is Saudi Arabia. Contrary to Kazakhstan it is not member of any international export control regime.

In terms of outcomes, EU outreach activities went a little bit further in Kazakhstan with the establishment of an identification centre (IC) but, for the rest, results achieved in both countries are very similar. In both countries, the main achievement has been the translation of EU dual-use Regulation and control list into Arabic in Jordan and into Russian in Kazakhstan. Despite the fact that it might appear as a minor achievement, the translation of EU dual-use Regulation and control list allowed not only for a knowledge of EU legislation in these countries but, more important, for the update of their national control lists introducing, indirectly through the EU, main updates introduced at the international level by export control regimes. Kazakhstan is also amending its export control regulation to harmonise it with international norms and practices, especially EU's and US' ones. Main amendments will concern: the enhancement of existing definitions, the inclusion of new definitions such as “intangible technology transfer” and “brokering activities”, the establishment of identification centres, modifications in the control list and provisions aiming on the criminalisation of brokering.

Jordan, on its side, is proceeding with the elaboration of a correlation list. Finally, both countries are in process of introducing additional provisions on brokering activities for Kazakhstan and transit and transshipment for Jordan (which is also receiving legal support, by the EU and the US, in the drafting process).

## 4. FINAL CONSIDERATIONS AND WAYS FORWARD

The analytical comparison of trade agreements signed between the EU and P2P countries showed that, before the entry into force of the United Nations Security Council Resolution 1540, EU trade agreements did not include any WMD non-proliferation clause and preceded dual-use export control outreach programmes. In this sense, trade agreements were concluded with third countries regardless their strategic trade control system.

On the contrary, since the entry into force of Resolution 1540, EU trade agreements not only include (with few exceptions) a WMD non-proliferation clause but also do follow export controls outreach programmes. As proof of this *modus operandi*, all countries part of the P2P coming from the Asia and South-East Asia Regions did not sign any trade agreement with the EU, but negotiations have started in almost all countries (see *infra*).

In other words, it seems that the EU, before starting negotiations for trade agreements with a given country, will seek to include this “targeted” country in its trade controls outreach programme. In this sense,, trade controls outreach activities seem to serve more as a tool to prepare the playfield before the game than a final aim *per se*.

As for the inclusion of the WMD non-proliferation clause in trade agreements, this does not seem to make any difference in term of concrete outcomes, as shown by the case-studies on Kazakhstan and Jordan. Still, the inclusion of the clause in these agreements seems to be now the rule, considering the fact that all trade agreements not containing such a clause were signed before Resolution 1540 and are now in the review process to be enhanced/updated (see *infra*). Given the lack of concrete impact of the clause in term of outcomes, one might wonder why the EU “insists” on this clause. It could be argued that the clause would represent a sort of legal incentive authorising States to implement WMD non-proliferation policy and to cooperate in this field.

Finally, as regard to the impact of EU dual-use outreach activities, it seems that the spill over effect is the best result, at least for the two considered countries. In this context, by spill over effect is meant the introduction into third countries' trade control systems of international standards and "soft" legal and political harmonisation with EU export control system and legislation and, indirectly, with more general international standards (e.g. international export control regimes).

Considering the findings of the analysis presented in this paper, it seems that the independent pattern can be identified in the EU international trade rather than in its dual-use trade control outreach activities. It means that although it is true that dual-use trade control outreach activities shape international trade and contribute to create/spread international standards, they finally serve EU international trade priorities. This specific correlation between EU international trade and EU export controls policy in outreach activities is quite realistic and "expected", but it could undermine EU's credibility *vis-à-vis* its engagement to WMD non-proliferation policy. It remains to be seen next developments concerning trade agreements with P2P countries, currently in negotiation phase.

The inclusion of the WMD non-proliferation clause in all trade agreements, whatever the partner country, together with its effective implementation could demonstrate, at least from a formal perspective, EU's engagement to export controls outreach activities for WMD non-proliferation purposes instead that for "setting the table before negotiations".

The implementation/strengthening of trade controls through outreach activities as incentive, for both parts, to go ahead with trade agreements should never counteract the ultimate goal of dual-use trade controls, that is the prevention of WMD proliferation and other related security threats. Once the incentive becomes the ultimate goal for both parts and the ultimate goal is spotted with inconsistencies, dual-use trade controls, whatever outreach or inreach, are likely to become a dysfunctional superstructure,

of little help in the prevention of WMD proliferation and security risks and of obstacle to the economic-driven *diktat*. For this reason the first question is not if dual-use trade controls outreach programmes are effective, but it is what does the EU expect from these programmes. Because if the real objective was to reach out foreign markets, trends seem to suggest promising results.

**State of play of trade agreements between EU  
and P2P countries by region**

**Asia-China (Not yet agreements but negotiations in process):**

- China (negotiations for a stand alone investment agreement)
- India (negotiations started in 2007 but stopped in 2013)
- Pakistan

**South East Asia (Not yet agreements but negotiations):**

- Brunei
- Cambodia
- Indonesia (Negotiations for a FTA started in 2016)
- Laos
- Malaysia (Negotiations for a FTA started in 2010 but stopped in 2012)
- Myanmar (Negotiations started in 2014 – EU text proposal presented)
- Philippines (Negotiations for a FTA started in 2015)
- Thailand (Negotiations for a FTA started in 2013)
- Vietnam (Free Trade Agreement (FTA) ready but not signed yet)

**North Africa (Agreements to update – no WMD clause):**

- Algeria (Euro-Mediterranean Agreement, September 2005 - post 1540, but no WMD clause)
- Egypt (Euro-Mediterranean Agreement, June 2004)
- Morocco (Association Agreement, March 2000 - to update in a Deep and Comprehensive Free Trade Area (DCFTA), negotiations started in 2013)
- Tunisia (Euro-Mediterranean Agreement, March 1998 – to update in a DCFTA, negotiations started in 2015)
- Middle East (No WMD clause):
- Jordan (Euro-Mediterranean Agreement, May 2002 – to update in a DCFTA, negotiations started in 2012)
- Lebanon (Association Agreement, March 2003)
- United Arab Emirates



**Middle East (No WMD clause):**

- Jordan (Euro-Mediterranean Agreement, May 2002 – to update in a DCFTA, negotiations started in 2012)
- Lebanon (Association Agreement, March 2003)
- United Arab Emirates

**Eastern Europe, Caucasus and Central Asia (Agreements and WMD clause):**

- Armenia (Partnership and Cooperation Agreement, September 1999 – to enhance, negotiations started in 2015)
- Azerbaijan (Partnership and Cooperation Agreement, September 1999 - to enhance but no date yet)
- Belarus
- Georgia (Association Agreement, July 2016)
- Kazakhstan (Enhanced Partnership and Cooperation Agreement, April 2016)
- Moldova (Association Agreement, July 2016)
- Ukraine (Deep and Comprehensive Association Agreement, January 2016)

**South East Europe (Agreements and WMD clause):**

- Albania (Stabilisation and Association Agreement, May 2006)
- Bosnia H. (Stabilisation and Association Agreement, June 2015)
- Kosovo (Stabilisation and Association Agreement, April 2016 - after 1540, but no WMD clause)
- Macedonia (Stabilisation and Association Agreement, April 2004)
- Montenegro (Stabilisation and Association Agreement, April 2010)
- Serbia (Stabilisation and Association Agreement, September 2013 - after 1540, but no WMD clause)



## Outreach Activities: Harmonisation or Standardisation of Security Postures?

Sylvain Paile-Calvo

*Senior Researcher, University of Liège*

The outreach activities of the European Union (EU) in the field of trade controls of dual-use items and technology find their roots in the EU Strategy against proliferation of Weapons of Mass Destruction (WMD)<sup>1</sup>, endorsed by the European Council on 12 December 2003. A strategy is a non-legislative act of the Union that expresses the objectives of its authors *vis-à-vis* their – security – environment. In this respect, it is a one-way document which defines the perception the EU has of itself and how it sees its role and action for implementing, maintaining and enforcing peace and security in the world. This strategy, similar to the global one that was adopted the same day<sup>2</sup>, relates to the vision and action of the Union by the Union alone, since the primary objective of a strategy, regardless of its origin, is to describe the world its author aspires to live in. Should outreach activities, as embedded now in the EU Partner-to-Partner (P2P) programme, thus be seen as the unilateral implementation of the security posture of the Union?

- 
- 1 Council of the European Union, EU Strategy against proliferation of Weapons of Mass Destruction, 10 December 2003, not published in the Official Journal. Link: <http://register.consilium.europa.eu/doc/srv?!=EN&f=ST%2015708%202003%20INIT>.
  - 2 Council of the European Union, *A Secure Europe in a Better World, European Security Strategy*, 12 December 2003, not published in the Official Journal. Link: <https://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>.

# 1. HARMONISING SECURITY POSTURES THROUGH CO-OPERATION

## 1.1. From the origin of outreach activities

The “founding act” of the EU outreach activities does not pretend to render the European vision on international security universal. It sends signals demonstrating that, although the vision is clear as regards the principle, the method is not certain.

The “WMD Strategy” clearly and extensively refers to the role of controls on the trade of dual-use items and technologies – under the term “export control” – in the fight against and prevention of the proliferation of WMD. For instance, it states that:

1. the EU is committed to strengthening export control policies and practices within its borders and beyond, in co-ordination with partners. The EU will work towards improving the existing export control mechanisms. It will advocate adherence to effective export control criteria by countries outside the existing regimes and arrangements.<sup>3</sup>
2. And it further states that:  
In order to tackle and limit the proliferation risk resulting from weaknesses in the administrative or institutional organisation of some countries, the EU should encourage them to be partners in the fight against proliferation, by offering a programme aimed at assisting these countries in improving their procedures, including the enactment and enforcement of implementing penal legislation. Assistance should be associated with regular joint evaluations, reinforcing the collaborative spirit and the confidence building.<sup>4</sup>

---

3 Council of the European Union, *EU Strategy against proliferation of Weapons of Mass Destruction*, 10 December 2003, Paragraph 19.

4 *Ibid.*, Paragraph 27.

These two extracts make use of terms such as “strengthening”, “improving”, “weaknesses”, “assisting”, “evaluations”, which illustrate the idea that the Union considers that the –then– present situation beyond the EU borders is not satisfactory. However, the underlining idea has more to do with working toward convergence, and care is taken to avoid terms suggesting efforts of “uniformisation”, e.g. “encourage”, “offering”, “collaborative spirit and the confidence building”. The first extract itself is taken from the section of Chapter II entitled “Effective multilateralism is the cornerstone of the European strategy for combating proliferation of WMD”.

In relation to the substance of the outreach activities, outside the action of the EU in the trade control regimes, the Strategy contains very little:

- Strengthening export control policies and practices in co-ordination with partners of the export control regimes; advocating, where applicable, adherence to effective export control criteria by countries outside the existing regimes and arrangements; strengthening suppliers’ regimes and European co-ordination in this area.
- (...) Reinforcing the efficiency of export control in an enlarged Europe, and successfully conducting a Peer Review to disseminate good practices by taking special account of the challenges of the forthcoming enlargement.
- Setting up a programme of assistance to States in need of technical knowledge in the field of export control.
- (...) Considering exchange of information between the EU SitCen and like-minded countries.<sup>5</sup>

This extract is taken from the section titled “Rendering multilateralism more effective by acting resolutely against proliferators”. Despite the name of “strategy”, the contents demonstrate the intent

---

5 *Ibid.*, Chapter III, Section A, Paragraph 4.

to slowly and diplomatically bring partner countries in line with the principle of controlling the trade of items that can be used for proliferation purposes, rather than setting prescriptive standards originated from the European Union's knowledge or know-how. The objective of outreach activities, instead of forcing or seeking compliance with the EU rules and policies in this area of security, is to co-operate for achieving what is set to be a universal goal: non-proliferation.

The policy underpinning the strategy can explain the difference between the common meaning of a strategy, which – even if it is usually not legally binding – projects a point of view on its surrounding environment, and the apparent weakness of the document. The Common Foreign and Security Policy (CFSP), under which the Strategy was adopted, is an area where the EU Member States can only coordinate their approaches. It is not a competence of the Union itself. Even though the control of trade in dual-use items and technology is a competence of the EU, the definition of objectives for the external action of the Union in this area relies on the good will of all contributors. In other words, the weakness of the CFSP for influencing the fate of the international security collaterally weakens the contents of the Strategy's message.

## 1.2. To their practice

It is generally acknowledged that the European Union does not seek to standardise the approaches or concepts of security with its partner countries, notably because it is originally not a security organisation. Its views on security thus correspond more to "approaches" than a formal "posture". In practice, this is also a way for the EU to convince others of the *bien-fondé* of its own approaches,

disconnected from direct “interests”. Even if this may seem unintended, it has proven to be an incentive in the establishment of partnerships in the framework of the outreach activities.<sup>6</sup>

The EU, through its outreach actors, demonstrated that it is aware of the impossibility to achieve uniform results in all of its partner countries, as it is also impossible even within the borders of the EU. The EU Regulation 428/2009 allows Member States to implement different approaches to a given issue, such as the adoption of national general licences or the penal provisions. The same pragmatism presides over its co-operation activities. For instance, regarding transactions to be covered by a dual-use trade control system, the EU could not and, in fact, does not constrain partner countries to strictly control all those which could, in principle, be diverted. It strongly encourages its partners to elaborate controls on export, transit, transshipment and brokering. It promotes controls on the financing or other ancillary services, which it does not strictly control itself, notably because it is aware of the practical difficulty that countries can face. In a similar vein, outreach actors do not discourage the adoption of import controls for the same reasons that the EU does not control these transactions. Effectiveness of existing good practices is sought, rather than strict compliance with standards that cannot be universally met both from a legal and a practical perspective.

The idea of universalisation itself has explicitly been waived by the European Union in the definition of its outreach method. In 2013, the European Commission’s DG DEVCO commissioned a study aimed at reviewing the method that outreach actors could use to cooperate with the partner countries in the elaboration and/or implementation of dual-use items and technology’s trade con-

---

6 These statements, which cannot always be supported by quantified data, as they are taken from author’s experience, who has been active in the EU outreach programmes.

trols.<sup>7</sup> The conclusion of this study<sup>8</sup> first stated that universalisation cannot be reached in this area. Owing to the differences of context, economic incentives, security challenges, national political priorities and, simply, respective experiences in controlling trade, one cannot duplicate the achievements of the EU or any other national system in partner countries as a principle. Based on these conclusions, a new approach for the Union's outreach activities was defined: the "3WH" approach, standing for "Why, What, Who, How".

The approach is not a method in the sense that it is not prescriptive. It proposes a set of keys for understanding dual-use trade control systems, highlighting gaps between a desirable end state –to be defined by and with each partner– and the forms and mechanisms of control that can in fact be found but that are never exhaustively met in one single system. The approach, therefore, is gradual in two ways: substantially, in allowing the outreach partnership to achieve different results in different countries without jeopardising the effectiveness of the trade control "system"; and formally, in allowing differences in the sequencing of the elaboration or implementation of the controls.

The 3WH is a benchmark of the international best practices from which the partner countries are encouraged to build up their own system but its *raison d'être* is the principle, confirmed by practical observations, that harmonisation shall be preferred to standardisation. The first aspect the approach dealing with the "Why" is a clear illustration. The outreach actors investigate partner countries' incentives for elaborating and implementing a dual-use trade control system and formulate them in a document, which the national actors can use for promoting their implementing activities. These incen-

---

7 Project FWC Commission 2009 – Lot 1, "Support to the Commission in preparation of activities on Illicit Trafficking and Export Control in African countries".

8 See: Odette Jankowitsch-Prevor, Quentin Michel, Sylvain Paile (eds.), *Modelling Dual-Use Trade Control Systems*, Brussels, P.I.E. Peter Lang, coll. Non-Proliferation and Security, vol. 10, 2014, 261 p., and Quentin Michel, Sylvain Paile-Calvo, "Dual-use controls outreach: a new method", *WorldECR*, Issue 38, March 2015, pp. 27-28.



tives are different or at least reflected in a different way in different countries, notably because of the respective security postures. The incentives find, through the 3WH approach, a way to be effectively considered in the “social contract” established between the provider of the outreach activities and the partner. The identification of the “Why” guarantees that the national security postures are preserved not only in the outcomes of the partnership but also in the activities that will be conducted under the partnership.

Finally, the EU outreach activities, notably in the EU P2P programme, in practice do not make use of an “EU model”. One of the reasons is that the EU political and legal configuration cannot be exported to all regions worldwide, but the main ones are that it is impossible to export the EU security “posture”. One must note that the P2P actors obviously provide testimonies from the European experiences, but also, whenever possible, from other countries, such as Japan, Malaysia and, of course, the United States. The European outreach actors, as in other outreach programmes, disseminate sources of inspiration taken from the internationally recognised experience and expertise they have. Although they promote the functioning of the system(s) they know –and value– best, they are not in a statutory position to defend a European posture on security and defence in general, the definition of which remains uneasy.

## **2. (NECESSARY) STANDARDISING EFFECTS**

Although the primary intent of the EU for its outreach activities is not to standardise its security posture, this may be a –necessary– collateral effect of its contribution to international peace and security.

The European Union, through its outreach activities, contributes to making the principle of elaborating and implementing a trade control system on dual-use items and technologies a universal standard. This has been legitimised by the United Nations Security

Council Resolution 1540 (2004), but the EU has demonstrated an intent to make it even a contractual obligation. The EU-Tunisia Action Plan, in force since 2005, for instance, contains a clear obligation for Tunisia to cooperate with the EU in the area of dual-use trade control as a part of their security-related obligations. The section stating that the two parties shall “continue to develop cooperation on combating terrorism” provides that this goes through “cooperation on establishing effective systems of national export control, controlling export and transit of WMD-related goods, including WMD end-use control on dual use technologies, and effective sanctions for breaches of export controls”.<sup>9</sup>

The universalisation of the European system is also, if not a “hidden agenda”, necessarily in the mind of the outreach actors because of the nature of the controls. If these enhance security, they also create risk for the international trade of the EU and its Member States. It is natural, therefore, that the institutions, organisations and individuals that cooperate with the partner countries aim to avoid trade control mechanisms of their neighbours and international competitors from being too liberal and provoking distortions of the markets. Universalisation may also be intended in the case of the South East European partner countries. Indeed, EU candidate countries must progressively amend their legal frameworks and practices to bring them in line with EU policies and legislations in the course of their negotiating processes. In the framework of outreach activities addressing these countries, therefore, partners are requested to abide by the European vision of international security.

The importance of its control list is also a European specificity. The European “single list” has become an international best practice not only promoted by the EU, but also other international donors in outreach activities, especially in the process of elaborating and implementing dual-use trade controls. The “EU list” has

---

9 EU-Tunisia Action Plan, Section 2.1, Paragraph 9. Link: [https://eeas.europa.eu/sites/eeas/files/tunisia\\_enp\\_ap\\_final\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/tunisia_enp_ap_final_en.pdf).

thus been adopted by systems of neighbouring countries –some of them willing to join the Union– but also overseas, such as in the Philippines, Malaysia, the United Arab Emirates. Some of these countries have decided to extend the list for their national needs, such as the United Arab Emirates or the Philippines, but the EU list has undoubtedly become a “standard”. It has even been translated by the EU into several non-EU languages, such as Russian, with a view to encourage its adoption by the greatest number of countries. The list compiles details and organises the lists adopted in the international regimes, but remains specific and highlights the European Union’s vision on security, in the sense that it delineates the concept of “dual-use”. Resolution 1540 (2004) limits its scope to the WMD-related items. The EU, through the definition and list it disseminates through its outreach activities, pleads for an extended vision of non-proliferation, notably including missile technology and arms-related equipment. Its security approach is thus promoted.

In the implementation of dual-use trade control mechanisms, standardisation is also being progressively addressed. It is often raised, within and beyond the borders of the Union, that common information exchange and notification systems would adequately complete the control enforcement arsenal at the disposal of the participating countries. Sharing target and risk-management resources about dual-use transactions is also a strong wish of most of the partners of the EU. Unanimously, P2P partners call for improved intelligence information exchanges. Undoubtedly, dual-use items and technology are not the main concern of many of the countries calling for pooling resources, as such exchanges on terrorism or other types of trafficking would correspond more to their national priorities. However, these “first step” demands reflect the importance outreach activities on dual-use trade controls has in terms of confidence-building measures in the fields of security and defence in general.

The views and opinions shared by the partner countries, finally, are sometimes supportive of standardisation as a principle. Very

often, in countries which are beginning to introduce dual-use trade controls, their origins, rationale, principles and mechanisms, experts often come across the question of why an international convention has not been adopted, following the model of the Arms Trade Treaty, or why there exist no model law of international origin on the topic. Regardless of different ways to reply to these questions, one can observe that standardisation does not seem to be the “bad word” we, Europeans, believe it may be.

### **3. CONCLUSION**

The European Union outreach programme is designed to understand its partner countries and propose approaches for the elaboration and implementation of dual-use trade controls that are tailored to national specificities. Harmonising national systems with European one(s) thus remains the engine of these activities.

Nonetheless, this flexible approach does prevent outreach actors from working toward certain guarantees of effectiveness and efficiency regarding security. It is in the interest of the Union to make sure its action actually contributes to the international security –as promoted externally– and its own security – as it should certainly make more visible internally.

# Outreach Activities and Sanctions: a(n) (im)possible relationship?

Dr. Ilaria Anna Colussi

*Marie Curie Post-doctoral Fellow, European Studies Unit,  
University of Liège (Belgium)*

## 1. INTRODUCTION

The European Union export control programme for dual-use goods (renamed EU Partner to Partner, EU P2P) aims to contribute to international security through the support, offered to third countries, in the promotion of best trading practices and in the compliance with international rules.

In order to check the effectiveness of the outreach programme for the promotion of international and national security, this chapter adopts –maybe provocatively– as a term of “measurement” the notion of sanction, as elaborated on in the area of strategic trade controls.

A premise on the definition of this notion is needed. In our understanding, sanctions can be conceived, on the one hand, as restrictions prohibiting trade of certain goods to specific destinations or to and from specific people, thus being an economic tool for achieving political purposes (such as the protection of peace and international security); and on the other hand, more narrowly, as measures of punishment for the violation of export control rules. The first category includes “supranational sanctions”, i.e. measures imposed at the international level (by the UN Security Council in the form of Resolutions, based on Chapter VII of UN Charter), and at the EU level (within the Common Foreign and Security Policy

framework<sup>1</sup>), both autonomously and implementing UN measures. The second category refers to “implementing measures”, i.e. measures adopted by Member States for the cases of violation of supranational rules regulating export control, which are the rules enacted by the international export control regimes (the Australia Group, the Missile Technology Control regime, the Nuclear Suppliers Group, the Wassenaar Arrangement, the Zangger Committee) and, in the EU context, by the Regulation 428/2009. This second category of sanctions is also referred to as “penalties”.

The following analysis represents an attempt to check the relationship between sanctions, penalties and outreach programme.

In the first part, the possible or impossible link between supranational sanctions and outreach programme will be explored; in the second part, the attention will be devoted to the Regulation 428/2009 and the (im)possibility to shape a model of “penalties” to be “exported” or included in cooperation activities, which are part of the EU outreach programme.

---

1 Restrictive measures are adopted in the form of Council decision, followed by a Regulation (if the sanction consists of a general embargo, or financial measures); or CFSP Council decisions alone, directly implemented by Member States (if the restriction consists of an arms embargo or travel bans).

## **2. FIRST PART: SUPRANATIONAL SANCTIONS AND OUTREACH**

### **2.1. Categorisation of Sanctioned Member States and Partner Countries Participating in Outreach Programme**

Considering supranational sanctions, at the international level (United Nations) there are at this stage 13 active sanctions regimes,<sup>2</sup> including both comprehensive sanctions (embargoes) and targeted measures (asset freezes and travel bans); at the EU level, there are 22 regimes, among which 14 are implementing UN ones and 8 constitute autonomous measures.<sup>3</sup> Combining the list of sanctioned countries and the list of countries part of EU outreach programme,<sup>4</sup> four categories of Member States emerge:

1. Member States under active embargo on dual-use items, but not part of outreach;
2. Member States under active arms embargo, and part of outreach;
3. Member States object of other active trade sanctions (on trade of other goods) and targeted sanctions, and part of outreach;
4. Member States under terminated arms or dual-use embargo, and part of outreach.

The following table is the result of such “matching” between sanctioned countries and countries participating in outreach.

---

2 See <http://www.un.org/en/sc/documents/resolutions/> and <https://www.un.org/sc/suborg/en/sanctions/information> (last visited 25.01.2017).

3 See [https://eeas.europa.eu/sites/eeas/files/restrictive\\_measures-2017-01-17-clean.pdf](https://eeas.europa.eu/sites/eeas/files/restrictive_measures-2017-01-17-clean.pdf) (last updated 17.01.2017, last visited 25.01.2017).

4 See <https://export-control.jrc.ec.europa.eu/Maps/Dual-use-programme-countries> (last visited 25.01.2017).

	<b>Part of EU dual-use outreach programme</b>	<b>Not Part of EU dual-use outreach programme</b>
UN embargoes (active) on arms	Lebanon	
UN embargoes (terminated) on arms	Former Yugoslavia	
UN embargoes (active) on dual- use items		Iran, Iraq/Kuwait, North Korea
UN embargoes (terminated) on dual-use items	South Africa	
EU embargoes (active) on arms	Belarus, China, Lebanon, Myanmar	
EU embargoes (terminated) on arms	Former Yugoslavia, Indonesia	
EU embargoes (active) on dual- use items		Iran, Iraq, North Korea, Russian Federation, Syria
EU embargoes (terminated) on dual-use items		Iran, Iraq
Other EU trade sanctions (active)	Ukraine, Myanmar	
Other EU trade sanctions (terminated)	Myanmar (partly)	
EU targeted sanctions (asset freezes and travel bans)	Belarus, Egypt, Moldova, Ukraine, Lebanon, Bosnia and Herzegovina, Serbia and Montenegro	



### 2.1.1 MEMBER STATES UNDER ACTIVE EMBARGO ON DUAL-USE ITEMS BUT NOT PART OF OUTREACH

The first group is constituted by Iran,<sup>5</sup> Iraq/Kuwait,<sup>6</sup> the Democratic People's Republic of North Korea<sup>7</sup> (under UN and EU embargo on dual-use items), the Russian Federation<sup>8</sup> and Syria<sup>9</sup> (under EU restrictive measures on dual-use goods). Here, there is no linkage between the presence of sanctions and outreach. It would be appropriate then to investigate the possibility of launching partnerships or preliminary liaisons and contacts with those countries, in order to promote a good export control system, which could avoid the imposition of sanctions in the future. In particular, with regard to Russia, an export control programme was in place between 2006 and 2009 (TACIS), after the collapse of the URSS, and it was terminated because of the lack of political will by Russian government; thus, it would be useful to rethink of it and restart some approaching steps, especially in light of the current geopolitical

- 
- 5 As regards the UN, see Resolutions 1696/2006, 1737/2006 imposing the suspension of all enrichment-related and reprocessing activities; 1747/2007; 1803/2008; and 1929/2010. As regards the EU, see Council Decision 2010/413/CFSP imposing embargo on dual-use goods; Council Decision 2011/235/CFSP; Council Regulation 359/2011 and 267/2012 imposing embargo on material, goods and technology which could contribute to enrichment-related, reprocessing or heavy water-related activities, or to the development of nuclear weapon delivery system.
  - 6 As regards the UN, see Resolutions 661/1990; 1483/2003; 1518/2003 and 1546/2004. As regards the EU, see Common Position 2003/495/CFSP imposing arms embargo on Iraq, Council Regulation 3541/1992 and 1210/2003 providing asset freezes and prohibition on import/export/trade in Iraq cultural property.
  - 7 As regards the UN, see Resolutions 1695/2006; 1718/2006; 2094/2013; 2270/2016, and 2321/2016.
  - 8 Council Decision 2014/145/CFSP; 2014/512/CFSP prohibiting arms exports to Russia; Council Regulation 269/2014; Council Decision 2014/386/CFSP containing import ban on goods originating in the Crimea/ Sevastopol; Regulation 833/2014 containing restrictions on dual-use goods with respect to Russia; Regulations 959/2014; 960/2014 and 1290/2014.
  - 9 Council Decision 2011/273/CFSP and Council Regulation 442/2011; Council Decision 2013/255/CFSP containing embargo on luxury goods and arms embargo; Council Regulation 36/2012 containing export ban on telecommunications equipment; and Council Regulation 305/2006.

context. This could help mitigate the sanctions in place and would be a significant move towards the restoration of better relationship between the European Union and Russia.

### **2.1.2 MEMBER STATES UNDER ACTIVE ARMS EMBARGO AND PART OF OUTREACH**

Lebanon<sup>10</sup> (under UN and EU arms embargo, as well as travel bans and asset freezes), Belarus<sup>11</sup> and Myanmar<sup>12</sup> (under EU arms embargo and targeted measures) and China<sup>13</sup> (EU arms embargo) have become part of outreach programme at different moments, but in all these cases the inclusion in the outreach programme occurred after the imposition of arms embargo and/or targeted measures: Lebanon joined in 2004, Belarus in 2015, China in 2006 and Myanmar in 2016.

A direct linkage between outreach and sanctions cannot be outlined in this case either, as outreach refers to dual-use items, while the embargo addresses arms. Nevertheless, it could be suggested that outreach may have the capacity to mitigate, to some

---

10 As regards the UN, see Resolutions 1636/2005 and 1701/2006; in the EU, Common Position 2006/625/CFSP and Council Regulation 1412/2006 imposing arms embargo and bans on certain services; Common Position 2005/388/CFSP and Council Regulation 305/2006.

11 Council Decision 2004/661/CFSP imposing travel bans, assets freezes, and embargo on arms and material that can be used for internal repression; Regulation 765/2006 and Council Decision 2012/642/CFSP.

12 Common Position 2006/318/CFSP imposing bans to export equipment that might be used for internal repression, arms embargo and asset freezes. Asset freezes and the embargo on equipment for internal repression were lifted in 2012, while other restrictions remain active until 30 April 2017. See Council Decision 2013/184/CFSP arms embargo and on material which might be used for internal repression and Council Regulation 401/2013 listing banned materials.

13 Presidential Statement, Declaration of European Council, 27 June 1989. Arms embargo on China is very much criticised and can be considered as a sanction with "uncertain status": indeed, the measure was adopted through an informal legal tool (even if the presidential Statement was the only possible instrument at that time), and many EU Member States still insist for the lifting, while others are against it.

extent, the existing sanction system, through the promotion of good trade practices, and thus influence changes in the “reputation” of the sanctioned country within the geopolitical environment.

### **2.1.3 MEMBER STATES OBJECT OF OTHER ACTIVE TRADE SANCTIONS (ON TRADE OF OTHER GOODS) AND TARGETED MEASURES, AND PART OF OUTREACH**

Ukraine became part of outreach programme in 2005 but, after the Russian threats to its sovereignty, a set of sanctions was launched by the EU, precisely:

1. sanctions on Crimea and Sevastopol, consisting in bans of imports of goods from and to Crimea and Sevastopol, used in the sectors of transport, telecommunications, energy, oil, gas and mineral resources;<sup>14</sup>
2. sanctions for the threat to Ukrainian sovereignty as such, in the form of targeted asset freezes and travel bans;<sup>15</sup> and
3. asset freezes for misappropriation of public property.<sup>16</sup>

In this case, outreach and sanctions respond to different objectives, and thus there is a mere coexistence of the two instruments. There is a sort of “double strategy” by the EU, which, on the one hand, promotes good trade control through outreach, and on the other hand imposes restrictive measures upon specific people, specific regions of the country and specific goods for foreign policy reasons.

The same occurs in the cases of Moldova and Egypt. Moldova is part of outreach since 2007, but in 2008 autonomous targeted sanctions were launched on a specific area and specific people.<sup>17</sup>

---

14 Council Decision 2014/386/CFSP, 2014/507/CFSP, 2014/933/CFSP, and Council Regulation 692/2014, 825/2014, 1351/2014.

15 Council Decision 2014/145/CFSP and Council Regulation 269/2014.

16 Council Decision 2014/119/CFSP and Council Regulation 208/2014.

17 Council Decision 2008/160/CFSP and 2010/573/CFSP.

Egypt was included in the outreach programme in 2011 and at the same time targeted measures addressed people linked to Mubarak regime and to misappropriation of funds.<sup>18</sup> No meaningful relationship between outreach and restrictive measures can be underlined in these two cases either.

#### **2.1.4 MEMBER STATES UNDER TERMINATED ARMS OR DUAL-USE EMBARGO, AND PART OF OUTREACH**

Former Yugoslavia and Indonesia are cases of EU terminated embargoes. It is worth remembering that the first Pilot Project of EU dual-use Outreach was started by the European Parliament in 2004 with four countries from the Balkans (among which Bosnia Herzegovina and Serbia and Montenegro).

Even if the programme was launched in the framework of the establishment of a Stabilisation and Association process with Western Balkan countries with the aim of eventual EU membership<sup>19</sup> (so, it was not thought in relation to, or as a consequence of, the removal of sanctions), the outreach chronologically followed the lifting of embargoes on the former Yugoslavia. Indeed, in 1991 and 1994 both the European Community and the UN imposed an arms embargo on former Yugoslavia,<sup>20</sup> then progressively lifted it<sup>21</sup> and ordered the complete removal of arms embargo on the

---

18 Council Decision 2011/172/CFSP and Council Regulation 270/2011.

19 See the Communication from the Commission to the Council and the European Parliament of 26 May 1999 on the stabilisation and association process for countries of South-Eastern Europe (COM (1999) 235 final), and the Council Conclusions on 21 June 1999.

20 As regards the UN, see Resolution 713/1991 and 757/1994 upon Serbia and Montenegro. In the EU, see Common Position 94/366/CFSP and Council Regulation 1733/1994 implementing UN arms embargo.

21 Common Position 96/184/CFSP, stating that export licence applications to Slovenia and the former Yugoslav Republic of Macedonia (FYROM) had to be considered on a case-by-case basis; Council Decision 1998/398/CFSP lifted arms embargo on Slovenia; Council Decision 1999/481/CFSP lifted the embargo on exports of small arms to the police forces of Bosnia and Herzegovina and the embargo on transfers of equipment needed for de-mining activities.

former Yugoslavia in 2001.<sup>22</sup> Targeted sanctions on certain people and activities in Bosnia and Herzegovina are still active (since 2004)<sup>23</sup> and likewise on people linked to Milosevic regime in Serbia and Montenegro (since 2000).<sup>24</sup> Significantly enough, the launch of the programme was at least “influenced” by the removal of the embargo, although the lifting was not the cause for beginning outreach activities.

A similar situation occurred in Indonesia, where the enjoyment of the outreach programme happened in 2012, after the removal of the arms embargo (in 2000).<sup>25</sup>

## 2.2. **Some remarks on the relationship between supranational sanctions and outreach**

On the basis of the analysis conducted so far, drawing a meaningful relationship between supranational sanctions and the EU dual use outreach seems quite difficult. Outreach programmes and sanctions appear as responding to different objectives. Outreach is thought as a way for incrementing cooperation and security both at national and international level, while sanctions are tools for punishing Member States for a wrong behaviour, for lack of respect to international rules (such as human rights), or for representing a threat to peace and security. However, the role that an outreach programme can play in mitigating the existing sanctions regime cannot be underestimated (even if the embargo is on arms or other goods than the dual-use ones), as well as its role in preventing future sanctions from being enacted: indeed, outreach can encourage the

---

22 Common Position 2001/719/CFSP and 2006/29/CFSP.

23 Regulation 1763/2004 and Council Decision 2011/173/CFSP about asset freezes and travel bans on people undermining Dayton/Paris General Framework Agreement for Peace.

24 Common Position 2000/696/CFSP and Regulation 2488/2000. Targeted sanctions upon Milosevic regime were renewed through Common Position 2014/742/CFSP and Council Regulation 1145/2014.

25 Common Position 1999/624/CFSP and 2158/1999/CFSP imposing arms embargo and bans to supply of equipment that can be used for internal repression or terrorism. In January 2000 the arms embargo was lifted.

adoption of good practices, or support the drafting of “fair” legislation, or help to train competent professionals operating in the field. All this can change the EU’s attitude in sanctioning the country, or avoid the future imposition of sanctions by the EU if an effective trade control system is in place.

### **3. SECOND PART: EUROPEAN PENALTIES AND OUTREACH**

#### **3.1. Regulation 428/2009 and Penalties**

Moving on to the level of penalties, i.e. implementing norms for the violation of export control rules, the central piece of legislation in the European context is Regulation 428/2009.<sup>26</sup> Indeed, EU Member States draft national norms on the basis of the framework embedded in the “dual-use regulation”. The research question is the following: does Regulation 428/2009 include a “model” of penalties for violation of export control rules, which could be shown to Partner countries of the outreach programme? Anticipating the conclusion, the answer is no. Regulation 428/2009 does not offer a clear indication of penalties neither substantially (meaning that the cases and types of violation that trigger the penalty are not mentioned), nor quantitatively/numerically (meaning that the amount of fines or imprisonment or confiscation or the amount of any other administrative, or civil, or criminal penalty is not specified). However, some references to possible violations are contained in art. 4.2 and 4.4, which require authorisations for the export of dual-use items not listed in Annex I (and subject to military end use) when the final destination or the purchasing country is subject to an arms embargo, or require the information to competent authorities as regards the destination of dual-use items

---

26 Council Regulation 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, in OJ L 134, 29.05.2009, p. 1–269, amended by Regulation 599/2014 of 16 April 2014.

to a country under embargo for WMD purposes. All this implies that, if the export occurs without authorisation, or there is a lack of information, a penalty can be triggered. However, it is up to Member States to define the violations and consequent penalties. Indeed, the regulation works *de facto* as a directive, leaving a large margin of appreciation to Member States. Art. 24, in particular, provides that Member States shall adopt proper penalties for enforcing the regulation, provided that they are “effective, proportionate and dissuasive”. They can also follow their own national enforcement mechanisms, as long as penalties and enforcement mechanisms meet the conditions of necessity and equivalence, and respect the principle of mutual recognition.

### 3.2. **The European Commission’s Proposal COM(2016) 616 final for Recasting Regulation 428/2009, and Penalties**

At the end of September 2016, the Commission published its proposal to amend Regulation 428/2009.<sup>27</sup> As regards penalties, the Proposal reiterates art. 24 (now art. 22) and adds a new article (23) (known as “anti-circumvention clause”) prohibiting the participation, knowingly and intentionally, in activities, the object or effect of which is to circumvent the need for an authorisation for export, brokering, transit and technical assistance of dual use items (as provided by arts. 3, 4, 5, 6 and 7). So, now an explicit case of violation is stated in terms of type of violation; however, quantitative and numerical penalties are still lacking and thus left to Member States’ choices of implementation.

Moreover, the Proposal Member States that the new regulation endorses the principles embedded in the Joint Action 2000/401/

---

27 See COM(2016) 616 final, 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), 28.09.2016, <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-616-EN-F1-1.PDF> (last visited 25.01.2017).

CFSP,<sup>28</sup> which complemented Regulation 428/2009. Such Joint Action focuses on technical assistance on certain military-end uses, and it also calls upon for the Member States' intervention in drafting an appropriate system of sanctions in case of violation of the Joint Action itself (art.5).

### 3.3. **Member States' Implementation of Penalties**

Taking into account, from a comparative perspective, the different European legislations implementing Regulation 428/2009, a "kaleidoscope" of provisions emerges.

#### 3.3.1 **ADMINISTRATIVE PENALTIES**

Administrative penalties are provided in all the Member States, even though Denmark,<sup>29</sup> Estonia,<sup>30</sup> Finland<sup>31</sup> and Sweden<sup>32</sup> make a general reference to fines without indicating a precise amount, and thus the choice is left to competent authorities.

Substantially speaking, for most countries a violation occurs when a required authorisation or license for dual-use items is bypassed.

---

28 Council Joint Action of 22 June 2000 (2000/401/CFSP) concerning the control of technical assistance related to certain military end-uses, in OJ L 159, 30.06.2000, pp. 0216 – 0217.

29 Danish Executive Order 475/2005 and Danish Customs Code (law 765/2004).

30 Estonian Strategic Goods Act, 2004 and Customs Act, 2004.

31 Law 562/1996 on dual-use export control; Criminal Code; Customs Law (Law 1299/2003); Act on the Export and Transit of Defence Materiel 242/1990, as amended by Law 900/2002.

32 2000 Swedish Act on the Control of Dual-use Items and Technical Assistance, SFS 2000:1064, as amended in 2008; and 2000 Act on Penalties for Smuggling, SFS 2000:1225, as amended in 2008.



Malta,<sup>33</sup> the Netherlands,<sup>34</sup> Romania<sup>35</sup> and Slovakia<sup>36</sup> indicate the case of non-observance of the end-user and final destination declarations of strategic goods, while the omission of information or giving incorrect and incomplete information to the licensing authority is provided in Austria,<sup>37</sup> Belgium,<sup>38</sup> Bulgaria,<sup>39</sup> Croatia,<sup>40</sup> France,<sup>41</sup> Germany,<sup>42</sup> Hungary,<sup>43</sup> Ireland,<sup>44</sup> Italy,<sup>45</sup> the Netherlands,

- 
- 33 Dual-Use Items (Export Control) Regulations, 2004, Legal Notice 416 of 2004, under the National Interest (Enabling Powers) Act; and Military Equipment (Export Control) Regulations, 2001, Legal Notice 269 of 2001.
- 34 2008 General Customs Act; 2008 Strategic Goods Decree; 1950 Economic Offences Act; 2012 Strategic Services Act (for the control of brokering, technical assistance and intangible transfers of technology); Law of 5 July 1997, on the rules concerning the manufacturing, trading, transporting, stocking, carrying of weapons and munitions (Weapons and Munitions Act).
- 35 Government Decision 594/1992 on import and export control of strategic goods and dual-use goods and technologies; Law 93/1994 on the import and export control of strategic goods; Law 136/2007 on export control regime of dual-use goods; Governmental Ordinance 119/2010; and Criminal Code.
- 36 Slovakian Act 26/2002 (Trading in Dual-use Goods) modified by Law no 39/2011; Act 179/1998 (Trading in Military Material); Act 199/2004 (Customs Act); and Act 21/2007 (on dual-use goods).
- 37 Austrian Foreign Trade Act 2011 (BGBl I 26/2011 as amended by BGBl I Nr. 37/2013) about military goods and dual-use items.
- 38 Law of 11 September 1962; General Customs and Excise Act of 18 July 1977; Law of 5 August 1991 relating to import, export, and the transit of arms, munitions, and material having specifically a military use and related technology (Foreign Arms Trade Act); Ministerial Orders of 28 September 2000 regulating the export and transit of dual-use items and technology; Law of 5 March 1952 concerning surcharges on criminal fines, as last amended in 2003.
- 39 1998 Customs Law; and 1996 Law on Control of Foreign Trade Activity in Arms and Dual-Use Goods and Technologies.
- 40 Act on the Export of Dual-use Items (OG 80/11 and 68/2013).
- 41 Law related to cryptographic products (Law 2004-575 of 21 June 2004); Decree 2001-1192 of 13 December 2001 on control of export, import and transfer of dual-use products; Arrêté of 13 December 2001 on control of exports of dual-use goods to a third country and transfer to EU countries; and Customs Code.
- 42 Regulatory Offences Act and German Foreign Trade and Payments Act.
- 43 Government Decree 13/2011 on foreign trade of dual-use items; Government Decree 301/2005 on the detailed rules of the licensing of manufacturing military products and the provision of military services; Government Decree 160/2011 regulating the export, import, transit and transfer of military products; and Criminal Code.
- 44 Control of Exports (Dual Use Items) Order 2009 SI n. 443/2009 and Control of Exports Act 2008.
- 45 Legislative Decree 96/2003 and Law 689/1981.

Poland,<sup>46</sup> Slovakia, Spain<sup>47</sup> and the UK.<sup>48</sup> The breach of a duty of care as a result of a lack of training compliance procedures has been embedded in German legislation. Violations of Regulation 428 are assimilated, or linked to smuggling in Belgium, Finland, Spain, Greece<sup>49</sup> and Latvia.<sup>50</sup> Slovakia contains a special rule on import, export, transport of rough diamonds, while France has norms on cryptographic products as a special category of dual-use items.

Aggravating cases are contemplated in Austria, Bulgaria, Germany, Estonia, France, Hungary, Latvia, Spain and Sweden, while the mitigating ones are found in Belgium, Finland, Greece, Slovakia, Sweden, the UK (“restoration penalty”). Recidivism is mentioned in Belgium Bulgaria, Spain and Sweden, and negligence is punished along with intention in Austria, Bulgaria, Finland, Germany, Sweden, Spain, and the UK.

Numerically, the highest fines are established in Belgium (up to 1 million for trade without license, which can reach 5.5 million Euros in more serious cases) and Germany (up to 1 million Euros for companies). A unique case is the UK with territorial application of fines: in case of minor infringements of brokering, technology and software transfers, the fines vary if the act is committed in

---

46 Law of 29 November 2000 on foreign trade in goods, technologies and services of strategic importance to the security of the State and to maintaining international peace and security (Law on the export control) amended on 2 July 2004; Criminal Code, 6 June 1997 (Dz.U.1997.88.553); and Law of 21 May 1999 on arms and munitions.

47 Law 53/2007 controlling the external trade in defence and dual-use items, implemented through the Royal Decree 679/2014; Criminal Code; Organic Law 12/1995, known as the Anti-smuggling Act, modified in 2015; and Royal Decree 1782/2004, Regulation on control of foreign trade in material for military end-uses, other material and dual-use items and technology.

48 1979 Customs and Excise Management Act; 2003 Export of Goods, Transfer of Technology and Provision of Technical Assistance Order (Statutory Instrument 2003/2764, as amended in 2008).

49 National Customs Code (Law 2960/2001), Law 4072/2012, Ministerial Decision E3/1255/06.03.1991 and Ministerial Decision 2641/E3/3327/26.03.1992 concerning control in export of items and technologies which affect the National Security in Greece.

50 2004 Law on Circulation of Strategic goods; Latvian Code of Administrative Violations; and Latvian Criminal Code.

England, Wales or Scotland and Northern Ireland. In the case of Spain, Czech Republic,<sup>51</sup> Latvia, Greece, Ireland, Luxembourg<sup>52</sup> and Slovakia, fines are linked to the value of goods.

In some Member States, other administrative penalties consist of suspension, annulations or revocation of export licences (France, Belgium, Germany, Luxembourg), the ban of carrying out dual-use exports (Croatia); the temporary suspension of a firm's activities (Greece and Latvia); the deprivation of the exporters' rights or privileges (Hungary and the Netherlands); the prohibition to accept public subsidies or public aid for contracting with public administration or for having tax or national insurance benefits (Spain).

### 3.3.2 CRIMINAL PENALTIES

In some cases, administrative actions are provided in alternative ("or") to criminal ones, as it occurs in Austria, Germany, Greece, Hungary, Latvia, Lithuania,<sup>53</sup> Malta, Poland, Slovenia<sup>54</sup> and Sweden, while in Czech Republic, Finland, France, the Netherlands, Portugal,<sup>55</sup> Romania, Slovakia, Spain, and the UK criminal penalties are in addition ("and") to administrative ones,

---

51 Act 13/1993, Customs Act; Act 594/2004 concerning the control of exports and imports of goods and technologies that are subject to international control regimes, as amended by Act 343/2010; and Criminal Code.

52 General Act on Customs and Excise of 18 July 1977; Grand-Ducal Regulation of 31 October 1995 on the import, export and transit of arms, munitions and equipment specifically intended for military use and related technology; Grand-Ducal Regulations of 5 October 2000 govern the export and transit of dual-use goods and technology.

53 Law on the Export, Import and Transit Control of Strategic Goods, 2004; Government Resolution 932/2004 on the Approval of Regulations for Licensing Export, Import, Transit and Brokerage of Strategic Goods and on Regulations for Enforcing the Control of Strategic Goods; Criminal Code; and Code of Administrative Offences.

54 Criminal Code; 2001 Export Control of Dual-Use Goods Act (amended in 2011 by law 39/2011); Decree on the Implementation of Dual-Use Goods Control.

55 Decree Law 436/91 and Criminal Code.

and in Belgium, Croatia, Cyprus,<sup>56</sup> Denmark, Ireland, Luxembourg and the Netherlands, the possibility of choosing between the both (“and/or”) is upon the competent authority.

Imprisonment is usually around 2 and 6 years. The most frequent and average penalty is up to 5 years’ imprisonment, as it occurs in Belgium, Croatia, Estonia, France, Germany, Ireland, Slovenia and Spain. France shows the highest penalty (up to 10 in case of trade without authorisation if the items are dangerous, or up to 20 years if repeated offence).

### **3.3.3 CONFISCATION**

Confiscation is established in 16 countries (Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, France, Greece, Italy, Latvia, Luxembourg, the Netherlands, Poland, Slovakia, Spain and the UK). In particular, Belgium provides for the confiscation of goods smuggled or exported without the license; France and Spain also refer confiscation to the transport means involved and to the direct and indirect profits. Confiscation is an additional measure in Germany, discretionary in Italy, and compulsory in Luxembourg.

### **3.4. A European model of penalties?**

The analysis conducted above shows that European States have chosen many different solutions for implementing Regulation 428/2009 as regards penalties. Much still remains to be done to pursue harmonisation and a coherent approach within Europe. Member States sometimes refer to general pieces or legislation (such as penal codes), other times they enact specific texts on dual-use items; some of them punish negligence, others not; the subjects of punishment are, in some cases, exporters only, in other cases all

---

56 Ministerial Decrees 91/2000 and 133/2000 about exportation, re-exportation or transit of goods and substances in compliance with the obligations which emanate from the membership of the Republic of Cyprus in the Nuclear Suppliers Group and the Australia Group; Ministerial Decree 601/2004 on dual-use goods; and Order 355/2002 Regulation of Export Control of dual-use goods and technology.

the stakeholders of supply chain, included helpers, participators, collaborators and anyone who knows or is involved in the illicit trade. Thus, determining a European model is almost impossible. However, such situation can be interpreted in opposite ways: on the one hand, it can encourage an “in-reach” restructure, harmonisation and modernisation of EU penalties, before “exporting” the EU system to Partner Countries. Indeed, it would be proper to add, at least, some other substantial explicit cases of violation in the Regulation (beyond the “anti-circumvention clause”), then leaving the implementation on Member States. On the other hand, the lack of a “model law” could mean that Partner Countries must identify by themselves the relevant elements in the different EU national legislations, and then develop their own rules, provided they are in line with international export control regimes, treaties and the UN Security Council Resolution 1540 (2004).

#### **4. CONCLUSION: WHAT WAY FORWARD?**

This chapter has taken the notion of “sanctions” in the area of strategic trade controls to examine the function and the role of the EU dual-use outreach programme.

Considering firstly “supranational sanctions”, it seems that no relationship may exist between outreach and sanctions. Indeed, there is no clear evidence that the lifting of an embargo upon a State has induced the EU to start an outreach programme with that country, nor are there Member States that have been under UN and EU embargo on dual-use goods and now are participating in outreach. However, on the basis of the analysis above, it is useful to conclude with some recommendations as a way forward for the improvement of outreach programmes.

Since these programmes constitute an instrument of cooperation and dialogue with external partners, as embedded in art. 27 of the new Proposal of Regulation 428/2009, the focus on the real

needs of the Partner Countries should be encouraged. Indeed, the historical situation of the country, such as having been subject to supranational sanctions, or still being object of targeted measures and other trade or financial or travel restrictions, should be considered evaluated correctly when developing outreach activities. Knowing that the country has been under embargo can explain the presence of some “resistances” to be involved in outreach, and thus it may help developing better measures, trainings, practices, and improving the dialogue. Then, if the State is still under EU restrictive measures, it is appropriate to introduce tailored trainings on trade compliance, and strengthening the existing awareness modules about enforcement, investigation and prosecution. This could enhance the country’s compliance efforts, and therefore outreach can play a role in the mitigation and undermining of active supranational sanctions, even in the long term.

Secondly, when dealing with the issue of EU penalties for the violation of Regulation 428/2009, here again it seems that outreach programme has no link with the topic. The comparative analysis between EU Member States’ legislations has demonstrated that a European model of penalties does not exist at the current stage. So, outreach programmes have no model to “offer” to Partner Countries, especially when providing legal assistance to support the drafting of laws and associated regulations, one of the aims of the EU P2P programme. However, this can be seen both as the confirmation of the approach that the outreach programme has adopted so far, and as a stimulus for change. In the first meaning, the lack of a model shows that the EU does not claim to stand from an arrogant position towards Partner Member States by imposing a model, but it simply “accompanies” them (as a peer, perfectly in line with the spirit of the EU P2P) along the process for the adoption of the rules that are more suitable to them. Therefore, the absence of a harmonised framework about penalties stresses the importance for the EU consortium to continue in the same line of cooperation with Partner Countries as developed until now, and stimulate the

approach of “proposing” –not “imposing”– an effective strategic trade control system. Moreover, as a matter of recommendation, the lack of a model may stimulate the EU to turn towards itself (“in-reach”) and rethink of the existing rules, by better defining or broadening them, especially in the current process of revision of Regulation 428/2009.





## **National Interdiction Mechanism as a tool for enhancing counter-proliferation capabilities**

Irena Kołakowska-Fałkowska

*Ministry of Foreign Affairs — Republic of Poland*

The article describes an initiative undertaken by the government of the Republic of Poland in order to enhance national capabilities for countering proliferation of Weapons of Mass Destruction (WMD). Its outcome was a guidebook, called National Interdiction Mechanism, which focuses on interrupting transfers of WMD-related dual use goods and describes procedures for stopping suspicious transports carrying those items. This paper provides information on the guidebook itself and on the process that led to its endorsement. It concludes by proposing to consider similar process as an outreach initiative in export control and counter proliferation programs.

### **1. INTRODUCTION**

The National Interdiction Mechanism is an official document that was adopted by the government of the Republic of Poland in December 2016. It describes procedures for interagency cooperation and decision-making when interdicting a dual use item suspected of being destined for production of Weapons of Mass Destruction or their delivery means. It also presents international commitments in non-proliferation domain and national legal basis for actions of governmental authorities. The National Interdiction Mechanism serves as a guidebook which is meant to help to expedite actions by

relevant services. Moreover, it might also contribute to strengthening institutional memory among governmental institutions in Poland in the counter-proliferation domain.

The work on the National Interdiction Mechanism was undertaken within the context of the participation of Poland in the Proliferation Security Initiative (PSI). PSI, established in 2003, groups over one hundred States which committed themselves to countering proliferation of Weapons of Mass Destruction and their delivery means<sup>1</sup>. PSI aims at coordinating “Participating States’ efforts, consistent with national legal authorities and relevant international law (e. g. UNSCR 1540)” to halt proliferation related trade in dual use goods. Thus, PSI complements existing counter proliferation efforts and provides a platform for networking among states and coordination of their activities. Firstly, the initiative strives for enhancing nations’ capabilities to take timely and appropriate action to stop WMD-related shipments. Secondly, when action is needed endorsers of the PSI seek to stop the delivery by cooperating with each other.

PSI initially focused on stopping and seizing WMD-related items on high sea. Taking into account practical problems relating to interdicting ships and inspecting cargo at open seas, the PSI forum soon took under deliberations all issues relating to preventing and countering proliferation of WMD-related goods: export control, customs authorities, prosecution and countering proliferation financing just to name the most significant ones.

Poland was one of the co-founders of PSI in 2003. Nevertheless, despite over 10 years’ experience of implementing commitments under the PSI, in 2015 Polish authorities commenced a thorough review of national laws and regulations related to countering and preventing proliferation of WMD. Therefore, at the beginning of

---

1 More information on PSI is available at its website: <http://www.psi-online.info/Vertretung/psi/en/01-about-psi/0-about-us.html>. Accessed on 19 March 2017.

2015 works began to design a hard-copy document providing a comprehensive information on national laws, procedures and cooperation mechanism available for interdicting WMD-related goods.

## **2. AIM FOR ESTABLISHING THE NATIONAL INTERDICTION MECHANISM**

The reason of creating the document was the necessity to enact a guidebook describing procedures for cooperation and decision making in an interdiction scenario and define options and actions available to authorities. The Mechanism connects export control legal framework with enforcement, fine tunes decision-making process thus contributing to strengthening of national counter-proliferation capabilities.

National Interdiction Mechanism was established in order to provide clear instructions for a situation when a WMD-related item (dual-use good) needs to be interdicted (stopped and confiscated) by the authorities during its transport. The center problem in decision-making in such a situation is related to the nature of the good in question. It is not any genre of Weapon of Mass Destruction that needs to be stopped (deciding about halting such a shipment would be obvious, except for safety considerations). The suspected good is a dual-use item, which apart from having a WMD application, may be credibly used in a production of a civilian product. Moreover, the item might be transported by an otherwise trustworthy private shipping company not aware of the possible military use of the good. In such a situation it is important that all first-line officers have clear information on legal issues, its consequences and instructions on available actions, which can be safely undertaken.

The Mechanism addresses the difficulty of interdicting dual use goods transported by legal means of commercial shipping (for example transited by mass container ships) when interdicting interferes with legal business activity. It provides clear information on

the issue, legal framework and options for action. It might be used by the representatives of law enforcement services on the first line (custom authorities, internal security service, border guard, police) and other governmental authorities involved (export control authority, diplomatic service etc.). Hence rendering decision-making under time constraints faster and easier. The National Interdiction Mechanism will serve as a kind of a guidebook that will help to expedite actions. Moreover, it will strengthen institutional memory among governmental institutions in Poland in the counter-proliferation domain.

### **3. THE NATIONAL INTERDICTION MECHANISM OF WMD-RELATED GOODS**

The document is entitled “«National Interdiction Mechanism» of illegal transfers of WMD, its means of delivery, technologies and dual use goods for its production. International WMD non-proliferation commitments of the Republic of Poland and national counter measures.” It was adopted on 23 December 2016 by the Council of Ministers (the highest governmental body in Poland). The work on it was conducted by the *Interministerial Committee for the prevention of WMD proliferation and implementation of Proliferation Security Initiative (PSI)*.

National Interdiction Mechanism is a 100-page handbook presenting all relevant issues with regard to countering proliferation of WMD: legal framework and procedures in export and custom controls, law enforcement and prosecution. Its chapters present the following topics:

1. International non-proliferation commitments of Poland,
2. Implementation of UN and EU sanctions in Poland,
3. General overview of the national export control system,

4. Competences of all relevant agencies that could be involved in countering proliferation, including stopping means of transports of dual use goods,
5. Cooperation and decision making procedures for an interdiction of a WMD-related material transported through Poland by sea, air and land,
6. Possible options for actions and their legal grounds,
7. Cooperation between authorities and decision-making mechanisms,
8. Scope of responsibilities of authorities,
9. National and international channels of communication.

The core essence of the Mechanism is a description of actions that need to be taken when interdiction of a suspicious transport of WMD-related materials is needed. This concerns cases of transfers to and from States and non-State actors of proliferation concern. It differentiates between end-users under international sanctions and those not covered by them. The document describes decision making and cooperation procedures between all relevant agencies. The National Interdiction Mechanism describes also procedures for international cooperation on interdiction of WMD-related dual use goods outside of Poland.

The mechanism is based on current legal framework and existing competences of national authorities. It does not introduce new laws or new formal responsibilities for agencies. However, it does describe or introduce new channels of communication and information exchange, and procedures for cooperation. Moreover, it clearly indicates “who is in charge of doing what” thereby providing procedures for solving challenging situations. On the basis of the existing legal basis it indicates authorities responsible for each step in the interdiction process, from decision-making, through stopping the item, to prosecution. Gathering all relevant information together in one handbook brings new quality to the knowledge available to actors involved.

As customs play the most important role in interdicting WMD-related dual use goods, special attention was given to their competences and authorities to act in harbors, airports, land border crossings and in the territory of Poland. The guidebook covers goods exported and in transit, those with an export control license and those being exported without one (e.g. items falling under control lists).

A great added value of the document comes from bringing together all relevant information in one document. Therefore, it serves as a handbook on countering-proliferation and provides institutional memory on the issue in Poland.

#### **4. PREPARING THE NATIONAL INTERDICTION MECHANISM**

In 2015 and 2016, an *Interagency Committee on preventing proliferation and PSI implementation* undertook a set of table top exercises and interagency meetings aimed at reviewing national law and procedures relevant to countering proliferation. The exercises were dedicated to interdicting WMD-related dual use goods at sea, on land and in the air. Participants were representing all relevant national authorities: custom authorities from the central and regional Custom Offices, export control authority, Internal Security Agency, Border Guards, Police (CBRN counterterrorism unit), Ministry of Foreign Affairs, relevant transportation authorities responsible for sea ports and civil aviation and last but not least representatives of Ministry of Defence and of Armed Forces.

During the exercises, the group discussed consecutive actions that would be undertaken from the very moment of receiving information on a suspicious shipment to the prosecution of the accomplices. This included legal basis of action for each authority, internal procedures and practices, flow of information between agencies involved and the decision-making process.

The table top exercises were complemented by legal analysis of international legal framework on non-proliferation and export control, including EU law in this domain and the UN Convention on the Law of the Sea. Very pertinent were consultations with two other EU States on the implementation of the EU export control and customs regulations and PSI commitments. It helped to compare best-practices and law regulations. Consultations were conducted with one of the largest economic partners of Poland with whom a large portion of the Polish trade in dual use goods is performed. The second State was interesting for Poland due to its considerably vast interdiction experience and long established national formal procedure for fast decision-making.

On the basis of these discussions, the description of the decision-making process and procedures for interdiction in Poland were written down along with respective legal basis for each action.

Of course, any system is faultless, and the review contributed to identifying some imperfections in national legal framework that necessitate further work in due course. Another conclusion was a need for establishing interagency agreements for cooperation between customs, Internal Security Agency and Ministry of Foreign Affairs when interdicting a WMD-related item. They would provide a clear set of guiding rules for all actors involved that will enable to save time in critical moments.

As in every interagency process, conducting regular interagency exercises and meetings, contributed to continued awareness raising among agencies. This was especially beneficial as in the middle of the effort on the Mechanism, the government in Poland changed as a result of parliamentary elections. Additionally, working relations (re)established among national and international partners during the process will be extremely useful in a real PSI situation, when personal contacts are of utmost importance.

## 5. CONCLUSIONS

Enacting the National Interdiction Mechanism in the course of national table top exercises could serve any State to verify its counter-proliferation laws and procedures. It would be especially relevant for countries that either recently introduced export control system and regulations relating to the implementation of the United Nations Security Council 1540 Resolution, or that undertook any reforms in this regard. It would help to identify and fill in gaps. What is important, is that the mechanisms may be tailor made to the capabilities and needs of any interested State, disregard its size.

Working on national mechanism through TTX and scenario-based discussions may also be proposed as an interesting activity within an outreach program. Its practical approach would effectively engage participants. It would then contribute to tangible and long lasting results of an outreach program by improving also institutional memory and providing networking opportunities.







© European Studies Unit (University of Liège)  
All rights are reserved. No part of this publication may  
be reproduced, stored in a retrieval system or transmitted  
in any form or by any means, electronic, mechanical,  
photocopying, recording or otherwise, without prior  
permission of the European Studies Unit.

Graphic Design : Philippe Dieu (Extra Bold)

**ISBN** : 978-2-9601919-1-2

The “Chaudfontaine Group” was established in 2010 as an annual two-day meeting group gathering young Europeans with diverse academic backgrounds – lawyers, economists, political scientists – from relevant national authorities, European institutions, industry and researchers from European scientific centres. Its members are invited to discuss their respective viewpoints on strategic issues faced by the European trade of sensitive goods in a constantly and rapidly evolving international context.

In November 2015, at its sixth conference, the Group met, confronted views and analysed the effect of international restrictive measures on the trade of strategic goods, notably “dual-use”, as well the legal penalties set by the States in case of infringements to the rules of the trade control system.

The authors herein analyse and debate the diversity of principles and provisions that can be met internationally as well as the practices in terms of implementation by the States and the economic actors.

ESU  
ULB  
European Studies Unit

