

Comments from the Danish Government
to the Commission's Green Paper
on the dual-use export control system of the European Union

Introduction

This paper presents the views and reflections of the Danish Government on the Commission's Green Paper and the questions herein. The Danish Government will primarily comment on general matters of principle. Stakeholders in the Danish dual-use industry, authorities and NGOs have been heard during the drafting of this paper.

The objective of export controls is to prevent potential proliferators from acquiring sensitive dual-use items and to ensure international peace and stability without hampering legitimate trade. In this respect, export controls exist in a narrow balance between security policy considerations and commercial interests.

With the current EU dual-use export control system as set out in Regulation No. 428/2009, Member States together with the Commission have tried to strike the right balance between security policy considerations and commercial interests. Despite these efforts the need for continued work towards further simplification, harmonisation and coordination remains a challenge.

Therefore, Denmark welcomes the Commission's efforts to further improve EU export controls by enhancing the industry's competitiveness and establishing a level playing field for all EU exporters while at the same time ensuring a high level of security and full compliance of international obligations.

Globalisation of trade and fast-growing technological development represent significant challenges to export controls in order to avoid that the system hampers legitimate trade.

A level playing field for EU exporters

A series of peer visits took place in 2010 and 2011 in order to allow experts from Member States to exchange practical experiences and best practices on the implementation of the dual-use Regulation. The rationale behind the peer visits is that

the system is only as strong as its weakest link since illicit exports are likely to exit the EU by whichever route offers the best chance of ‘success’.

The peer visits revealed a number of discrepancies among national dual-use systems. For example, Member States have various interpretations of measures that must be taken into consideration when deciding whether or not to grant an export authorisation. These discrepancies compromise the overall effectiveness of EU export controls and create distortions of trade.

The Danish Government holds the opinion that it is desirable to achieve uniform and consistent application of controls throughout the Union in order to avoid unfair competition among EU exporters and to ensure efficiency and effectiveness of the security controls in the European Union.

Distortions of trade can only be avoided through intensive cooperation and exchange of information among EU Member States.

Improving consistency of implementation measures across the EU

Dual-use export control policy has undergone significant development at EU level over the last few years. This has been largely due to important EU-wide initiatives such as the setting up of the EU Denials Database, the adoption of the recast dual-use Regulation and the negotiations on new EU General Export Authorisations. Notwithstanding the significant progress made in several other areas of work, it is the Danish view that the practical implementation of export control measures deserves further attention.

Regulation No. 428/2009 sets out the framework for dual-use export controls within the European Union. This framework includes issues such as the types of authorisations that can be issued, the use of catch-all controls, cooperation and information exchange among Member States, and various consultation procedures. Practical experience has shown that there is an increasing need for more detailed explanations of how certain provisions of the dual-use framework should be implemented.

In this regard, Denmark welcomes the Commission’s efforts on improving the consistency of implementation measures taken across the EU by drafting agreed guidelines that should become available toward the end of 2011. These guidelines could, hopefully, improve certain provisions of the dual-use Regulation and provide guidance on implementation issues. Furthermore, the guidelines could assist industry as well as public authorities with the interpretation of the dual-use Regulation. As an

example, a guideline on the General Note 2 in Annex I of the dual-use Regulation would be useful as a common EU understanding of the Note 2 is currently lacking.

Another welcomed initiative from the Commission is the strengthening of the EU-wide Pool of Technical Experts. From the perspective of a small Member State with limited resources strengthening the Pool of Experts seems to be not only a logical next step but also a necessary step in order to ensure the effectiveness of the overall EU export control system. In this regard, the Danish Government supports the aim of providing homogeneous access to technical advice through the strengthening of the EU-wide Pool of Experts. A more structured Pool of Experts could hopefully help create a level playing field by adding to the harmonisation of technical assessments.

Risk-driven model for EU export controls

It is the point of view of the Danish Government that the EU should strengthen the efforts in facilitating trade to close partners and allies. This could be done by either creating new EU General Export Authorisations or by widening the scope and destinations of the existing ones. Another suggestion for simplification should be to reduce the intra-EU transfer controls.

By facilitating trade to close partners and allies, Member States can better focus their resources ensuring the most sensitive items do not end up where they should not. On this basis, Denmark is in favour of working towards a more risk-driven model for EU export controls, where limited resources are invested into controlling the highest-risk transactions in order to keep the most sensitive goods out of the most dangerous hands. Such a risk-driven model will be fully in line with the latest U.S. Export Control Reform Initiative which aims to build higher fences around a core set of items whose misuse can pose a national security threat.

Regarding information exchange between licensing authorities it is important to strike the right balance between information overload and relevant information. Therefore, the degree of detail needs further clarification.

It could be useful to explore the possibilities of creating an EU-wide catch-all control, whilst fully respecting Member States' national security prerogatives. The responsibility for deciding on export authorisations should remain with the Member States.

The aim of the future EU export control framework must be to strengthen European security and European competitiveness by focusing on current threats and adapting to the changing economic and technological landscape.

To conclude, the Danish Government is in full support of the need for further improving EU export controls in order to ensure the competitiveness of our industries, and yet maintain dynamic and precise controls.