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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**on the implementation of Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, including a report on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Regulation (EU) No 599/2014 of the European Parliament and the Council of 16 April 2014 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items**

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### **1. INTRODUCTION**

Article 23(3) of Regulation (EC) No 428/2009 ("the Regulation") requires the Commission to submit an annual report to the European Parliament on "the activities, examinations and consultations of the Dual-Use Coordination Group (DUCG)". Article 25(2) of Regulation (EC) 428/2009 further requires the Commission to present, every three years a "comprehensive implementation and impact assessment report" to the Council and Parliament. Article 25(3) stipulates that special sections of the report shall deal with the activities of the Dual-Use Coordination Group (DUCG), the introduction of a secure and encrypted system for the exchange of information between Member States and the Commission, as well as the implementation of Article 15(1) and (2) regarding updates to the control lists and Article 24 regarding national penalties in case of infringement to the Regulation. In light of this, the Commission started publishing annual export control reports in 2013 and recognised, in its 2014 Communication on "The review of export control policy"<sup>1</sup>, that the publication of reports and non-sensitive control information are critical steps to enhance transparency and improve operators' compliance and their capacity to implement controls.

Furthermore, in order to ensure regular and timely updates of the common list of dual-use items in conformity with the obligations and commitments taken by Member States within the international export control regimes, Regulation (EU) No 599/2014<sup>2</sup> of the European Parliament and of the Council of 16 April 2014, amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, delegated to the Commission the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) in respect of amending Annex I to Regulation (EC) No 428/2009 within the scope of Article 15 of that Regulation. The power to adopt delegated acts was conferred upon the Commission for a period of five years and Article 23a stipulates "the Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period".

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<sup>1</sup> COM(2014)244 final of 24.4.2014.

<sup>2</sup> OJ L 173, 12.6.2014, p. 79.

This report, prepared by the Commission with input from Member States<sup>3</sup> in the DUCG, provides information on the implementation of the Regulation in 2018, and includes aggregated export control data for 2017.

## **2. EVOLUTION OF THE POLICY & REGULATORY FRAMEWORK**

### **2.1 Export control policy review**

The legislative process for a modernisation of EU export controls, that started in 2016 as the European Parliament and the Council examined the Commission proposal<sup>4</sup>, advanced in 2018 with the adoption of a report and position of the European Parliament on 17 January 2018. The Parliament's position includes 101 amendments demonstrating its broad support for more harmonised and effective controls, adapting the EU export control system to new threats associated with cyber-surveillance technologies and taking into consideration human rights as part of the overall thrust for more responsible value-based trade and a "Europe that protects". For its part, the Council continued to examine the proposal during 2018.

The Commission conducted a series of targeted consultations and outreach to key industry and civil society stakeholders in the course of 2018. In particular, an Export Control Forum was organised on 13 December 2018, jointly with the Austrian Presidency of the Council of the EU, to exchange views with industry and civil society stakeholders<sup>5</sup>.

### **2.2 Amendments to Regulation (EC) No 428/2009**

Art. 25(3) (c) and (d) require the Commission to report on the implementation of Article 15(1) and (2) regarding the update to Annex I and IV of the Regulation. Annex I to the Regulation was amended once during the reporting period. Commission Delegated Regulation (EU) 2018/1922 of 10 October 2018<sup>6</sup> updated the EU Control List in Annex I, and incorporated over 200 modifications agreed at the multilateral export control regimes in 2017 (mostly from amendments agreed at the 2017 Plenary of the Wassenaar Arrangement, many of them editorial). Annexes II and IV of the Regulation were also updated in line with the amendments to Annex I.

The 2018 EU control list introduced new controls on electro-optic modulators (3A001i) semiconductor manufacturing mask substrate blanks (3B001j) and for Focal Plane Array (FPA) readout integrated circuits (ROIC) (6A002f). On the other hand, it removes control on robots with 3D image processing (2B007a), on technology for numerical control units (2E003b) and machine tool instruction generators (2E003d) and introduces new decontrols for 'upgrade' intrusion software (4D004), technology for 'vulnerability disclosure' and 'cyber incident response' (4E001) as well as on high speed cinema film recording and mechanical cameras (6A003a). The 2018 EU control list also incorporates changes to the controls on measuring and inspection equipment (2B006), marine gas turbines (9A002) and ground based spacecraft control equipment (9A004) as well as for flow-forming machines (2B109) to missile production, satellite navigation systems (7A105) to include regional as well as global systems and turbojet/fan engines (9A101).

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<sup>3</sup> Some Member States' competent authorities also publicly report on trade in dual-use items.

<sup>4</sup> The Commission proposal for a regulation COM(2016)616 is available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1476175365847&uri=CELEX:52016PC0616>

<sup>5</sup> [http://trade.ec.europa.eu/doclib/docs/2018/december/tradoc\\_157562.pdf](http://trade.ec.europa.eu/doclib/docs/2018/december/tradoc_157562.pdf)

<sup>6</sup> OJ L 319, 14.12.2018, p. 1.

A "Comprehensive Change Note" was published as guidance providing an overview of all technical changes to the 2018 EU Dual-Use Control List<sup>7</sup>. The updated and consolidated EU Control List became applicable on 15 December 2018, thereby allowing the EU to adhere to its international commitments with regard to export controls and helping EU exporters where control parameters were relaxed.

The Commission also adopted on 19 December 2018 a proposal<sup>8</sup> to amend the Regulation as part of a package of measures under a "no deal contingency plan" for certain sectors in the perspective of the United Kingdom's withdrawal from the European Union. The proposal adds the United Kingdom to the list of destinations on EU001 in order to avoid disproportionate trade disruptions and excessive administrative burden for EU exports of dual-use items to the United Kingdom while preserving international and EU security.

### **2.3 National implementing measures**

The Regulation is binding in its entirety and directly applicable in all Member States, but provides that Member States take certain measures for the implementation of specific provisions, and that information on those measures should be published in the Official Journal of the European Union. The Information Note of 20 August 2016<sup>9</sup> provides an overview of measures taken by Member States including, inter alia, the extension of brokering and transit controls, the extension of controls to non-listed items for reasons of public security and human rights considerations, the introduction of national general export authorisations, the application of intra-EU transfer controls for non-listed items, as well as information relating to competent authorities. Furthermore, new measures were reported by Member States in 2018: Italy adopted Legislative Decree No 221 of 15 December 2017 updating national provisions under Regulation (EC) no 428/2009, while Luxembourg adopted a law on export control on 27 June 2018. Also to be noted, the Netherlands adopted on 23 October 2018 a guidance note on cloud exports.

Article 24 of the Regulation stipulates that "Each Member State shall take appropriate measures to ensure proper enforcement of all the provisions of this Regulation. In particular, it shall lay down the penalties applicable to infringements of the provisions of this Regulation or of those adopted for its implementation. Those penalties must be effective, proportionate and dissuasive". Article 25(3)(e) requires that the Commission's report includes a special section dealing with "the measures taken by the Member States pursuant to Article 24 and notified to the Commission under paragraph 1 of this Article". The Annex to this report includes a list of such measures as reported to the Commission.

## **3. ACTIVITIES OF THE DUAL-USE COORDINATION GROUP**

Article 23(3) of the Regulation requires that the Commission shall submit an annual report to the European Parliament on the activities, examinations and consultations of the Dual-Use Coordination Group (DUCG)" that brings together experts from the Commission and Member States to examine any issue concerning the application of export controls with a view to

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<sup>7</sup> The Summary Note is available at: [http://trade.ec.europa.eu/doclib/docs/2018/december/tradoc\\_157585.pdf](http://trade.ec.europa.eu/doclib/docs/2018/december/tradoc_157585.pdf)

<sup>8</sup> OJ L 85 I, 27.3.2019, p. 20. Regulation (EU) 2019/496 of the European Parliament and of the Council was adopted on 25 March 2019 (OJ L 85 I, 27.3.2019).

<sup>9</sup> OJ C 304, 20.8.2016, p. 3.

practically improving their consistency and effectiveness throughout the EU. Furthermore, Article 25(3)(a) adds that "special sections of the report shall deal with the Dual-Use Coordination Group and its activities".

The DUCG held seven meetings during the reporting period, thus providing a forum for consultations on a number of topical issues concerning the implementation of the Regulation. DUCG experts also participated in a Technical Seminar in preparation of the United Kingdom's withdrawal from the European Union.

### **3.1 Consultations on implementation issues - general information exchange**

The DUCG conducted *general information exchanges on export control issues*, including in support of the modernisation of EU export controls. The DUCG reviewed the *implementation of end-use ("catch-all") controls* in order to identify "commonalities" in national approaches and conducted a survey of *national practices with respect to the validity of licences*, which evidenced variations of national practices in this respect.

The DUCG discussed the position paper presented by the League of European Research Universities (LERU, an association of 23 leading research-intensive universities in Europe, <https://tinyurl.com/LERU-Dual-Use>), which outlines the key concerns of the academic sector with regard to the implementation of the Regulation, and discussed options for the development of guidance to support consistent and effective application of controls on dual-use research.

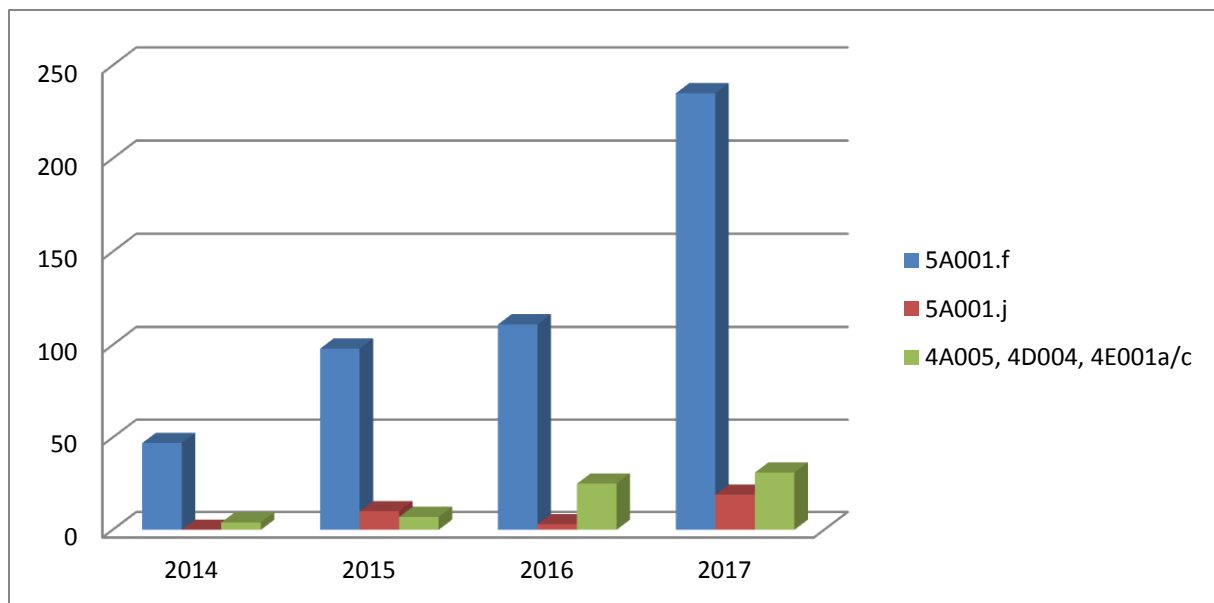
The DUCG exchanged information regarding *national implementing measures* and initiated preparations for updating the relevant Information Note in light of notifications of national measures by Italy and Luxembourg.

The DUCG reviewed the methodology and approach for data exchange, and conducted a *licensing data collection exercise* on 2017 data in order to enhance information exchange between Member States and to increase public transparency on EU dual-use export controls (EU 2017 aggregated data was used in the preparation of this annual export control report).

In consideration of the debate regarding the control of cyber-surveillance items, the DUCG conducted an *exchange of information on the application of controls on cyber-surveillance technologies* in 2017. The data shows an increasing but limited number of licences (285 licences in 2017). In the same period, 34 denials were issued for cyber-surveillance items<sup>10</sup>.

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<sup>10</sup> 20 denials were issued in 2017 for mobile telecommunications interception or jamming equipment, 1 for Internet Protocol (IP) network communications surveillance systems and 13 for intrusion software.



The DUCG supervised the activity of the "Surveillance Technology Expert Group" ("STEG"). The STEG held one meeting in 2018 and monitored relevant technology and policy developments, reviewed licensing and denials trends and provided expertise in support of the legislative process for the modernisation of EU export controls and in relation to technical discussions in the Wassenaar multilateral export control regime.

### 3.2 Technical exchange of information - implementation issues

- *Support to the preparation of updates to the EU control list*

The DUCG was consulted and supported the preparation of a Commission Delegated Regulation updating the EU Control List in Annex I to Regulation (EC) No 428/2009. National experts, as well as observers from the European Parliament, attended a special session of the DUCG on 17 May 2018 and gave presentations highlighting the most important changes to the control list. Commission Delegated Regulation (EU) 2018/1922 was adopted on 10 October 2018 and published on 14 December 2018<sup>11</sup>.

- *Technical information exchange on specific implementation issues*

A Virtual Working Group on nuclear controls, chaired by Sweden, conducted a *technical assessment of control parameters for specific nuclear items* and the DUCG endorsed its proposal to include the Nuclear Software Note in the 2018 EU list of dual-use items. The DUCG also supported the continuation of discussions on specific control parameters e.g. for 0A001 (nuclear reactors) and 0B001 (Plant for the separation of isotopes of natural uranium, depleted uranium or special fissile materials etc.) in an effort to harmonise the interpretation of those controls.

The DUCG also endorsed the creation of a Technical Expert Group on the control of chemical weapons precursor salts, and supported the technical preparation of the EU position on this issue in the relevant multilateral export control regime.

<sup>11</sup> OJ L 319, 14.12.2018, p. 1.

The DUCG held a Joint Meeting of Licensing and Customs Experts on 12 October 2018 to conduct a technical examination of some customs-related provisions e.g. regarding the definition of exporter, the consignee and end user data indicated on export and customs declarations for dual use exports and the role of the Correlation Table in dual use risk-selection by the customs authorities.

### **3.3 EU Guidelines on Dual-Use Export Controls**

The DUCG set up a "Technical Expert Group on Guidelines for Internal Compliance Programmes (ICPs)". The TEG-ICP held four meetings - on 29 January, 1 March, 7 May and 30 November - and conducted a public consultation phase on a draft ICP guidance in September-November 2018. A total of 169 responses were received from industry associations and exporters in 23 EU Member States. Industry comments were reviewed by TEG experts and the draft guidance was presented to stakeholders at the Export Control Forum on 13 December 2018. The guidance is expected to be adopted in the course of 2019.

### **3.4 Electronic exchange of information between competent authorities**

Article 25(3)(b) requires the Commission to report on "the implementation of Article 19(4)" and "the stage reached in the set-up of the secure and encrypted system for the exchange of information between Member States and the Commission". The Commission, supported by the DUCG, continued to develop the Dual-use e-System (DUeS), a secure and encrypted electronic system hosted by the Commission, to support the enhanced exchange of information between export control authorities and the Commission. In the course of 2018, the DUCG agreed on specific improvements to DUeS and developed functionalities supporting *denials notifications under Article 13(5) of Regulation (EC) No 428/2009* and *bilateral consultations between competent authorities under Article 11 and Article 13(5) of the Regulation*. Other minor updates were made to the DUeS e.g. in December 2018, the list of items in the DUeS was updated to reflect the *2018 update of the EU control list* under Commission Delegated Regulation (EU) 2018/1922.

The DUCG also continued to support the development of an "electronic licensing platform" to be used by competent authorities on a voluntary basis through a dedicated Technical Expert Group. Following the 2017 feasibility study, the TEG on e-licensing met twice – on 14 March and 13 September 2018 - and provided continued support to the "eLicensing pilot project". At the end of 2018, the "Front Office prototype" was ready for testing by competent authorities, while the "Back Office prototype" was under development. Italy, Latvia, Romania and Greece joined the pilot project. The project was presented to stakeholders on the occasion of the Export Control Forum on 13 December 2018. At the end of 2018, 13 Member States had electronic licensing systems in place.

### **3.5 EU Dual-use Pool of Experts**

In 2018, the EU Dual-use Pool of Experts operated by Commission's Joint Research Centre (JRC) and experts made available by Member States continued to provide support to competent authorities requesting advice to support the assessment of specific licensing cases. In total, 10 technical advices on commodity classification were provided to 6 competent authorities over the reporting period.

### **3.6 Implementation and enforcement**

The DUCG exchanged information on the implementation and enforcement of controls. According to available data, in 2018 the EU export control network – comprising staff in Member States' competent authorities and the Commission - consisted of over 300 staff. With respect to enforcement, 120 breaches of export control regulations were recorded in 2017, while 130 administrative penalties and 2 criminal penalties were applied by national law enforcement authorities.

### **3.7 Capacity building**

In 2017, the Commission's JRC continued the series of technical seminars in collaboration with the US Department of Energy, and held the 10<sup>th</sup> seminar on 23-24 May 2017 at the World Customs Organization's headquarters in Brussels, Belgium. The event was attended by licensing officers and technical experts from competent authorities, as well as exporters, academia and research organisations. Themes explored included challenges related to implementing catch all controls and challenges related to linking customs codes and export control lists.

In 2018, the DUCG supported the organisation by the Commission's JRC of an *EU 'Inreach' capacity-building seminar* in Ispra (Italy) on 6-7 March 2018 and of a *technical seminar, organised jointly with the US National Nuclear Security Administration (NNSA)*, also in Ispra, on 18-19 September 2018.

The Commission's JRC presented an "Export Control Handbook for Chemicals" that identifies correlation codes for chemicals (Export control classification number, Customs code, CAS number and chemical name) under various EU trade regulations.

### **3.8 Transparency and dialogue with industry and academia**

The DUCG supported the organisation of an "Export Control Forum" on 13 December 2018 in Brussels with industry associations, dual-use companies, academia and civil society organisations to discuss the implementation of EU export controls and the legislative process for a modernisation of EU export controls. Altogether, the Commission and competent authorities organised or participated in over 180 industry outreach events in 2018.

The DUCG also prepared documentation to support exporters' implementation of the regulations. In particular, a "Comprehensive Change Note" summarises, for information purposes, the control text changes to the EU control list introduced under Commission Delegated Regulation (EU) 2018/1922.

## **4 EU EXPORT CONTROLS – KEY DATA**

It is difficult to obtain reliable information on overall dual-use exports (including non-listed dual-use items) as there is no correspondingly defined economic sector. However, the Commission and Member States collect data that allow for approximate estimates of exports of dual-use goods based, on the one hand, on specific licensing data collected by competent authorities and, on the other hand, on statistics for customs commodities which include dual-



use goods. 2017 export data estimates are presented below. It should be noted that the estimates presented hereafter do not include services and intangible technology transfers associated with the trade in dual-use goods.

#### 4.1 EU dual-use trade: items and destinations

In 2018, the Regulation primarily applied to the export of about 1846 dual-use "items" listed in Annex I (the "EU Control List") and classified in 10 categories (Figure 1). These dual-use items relate to circa 1000 customs commodities, including chemicals, metals and non-metallic mineral products, computers, electronic and optical products, electrical equipment, machinery, vehicles and transport equipment etc. and typically fall at the high-tech end of this large, mixed commodity area.

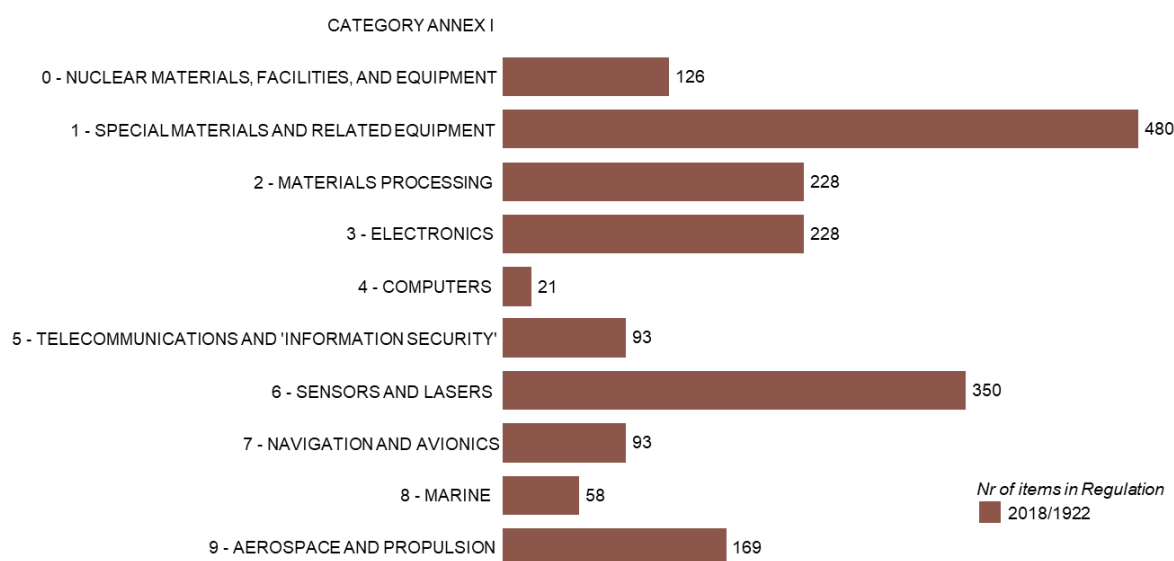


Figure 1: Number of dual-use items listed in the 10 Categories of Annex I further to the adoption of Regulation (EU) 2018/1922.

Statistical estimates of the relative importance of dual-use trade indicate that dual-use exports represent about 2.3% of EU total exports (intra and extra-EU), within a broad 'dual-use export domain'<sup>12</sup> of customs commodities (Figure 2).

<sup>12</sup> The statistical methodology developed by the Commission's Joint Research Centre makes use of a correlation table, developed by DG TAXUD, between dual-use classification numbers and customs codes and of Eurostat's COMEXT data, as well as of licensing data. The notion of *dual-use export domain* refers to a large mixed commodity area, which includes dual-use items. Trade in dual-use items takes place *within* this commodity area, but is not identical to it, since by far, not all of the commodities within the *dual-use export domain* are really dual-use.

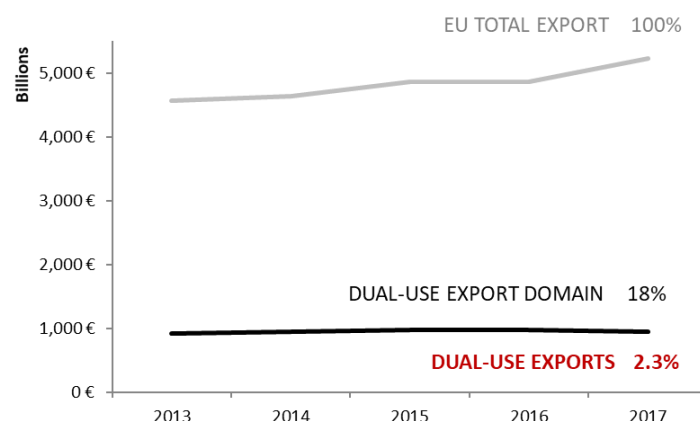


Figure 2: Statistical estimates of dual-use intra and extra-EU exports.

Statistical estimates also show the main export destinations and indicate that a large part of the dual-use exports are directed towards countries listed on Union General Export Authorisations (EUGEAs). The destination countries reflect the EU export market structure in the relevant commodities as well as trade facilitation under EUGEAs (Figure 3 and 4)<sup>13</sup>.

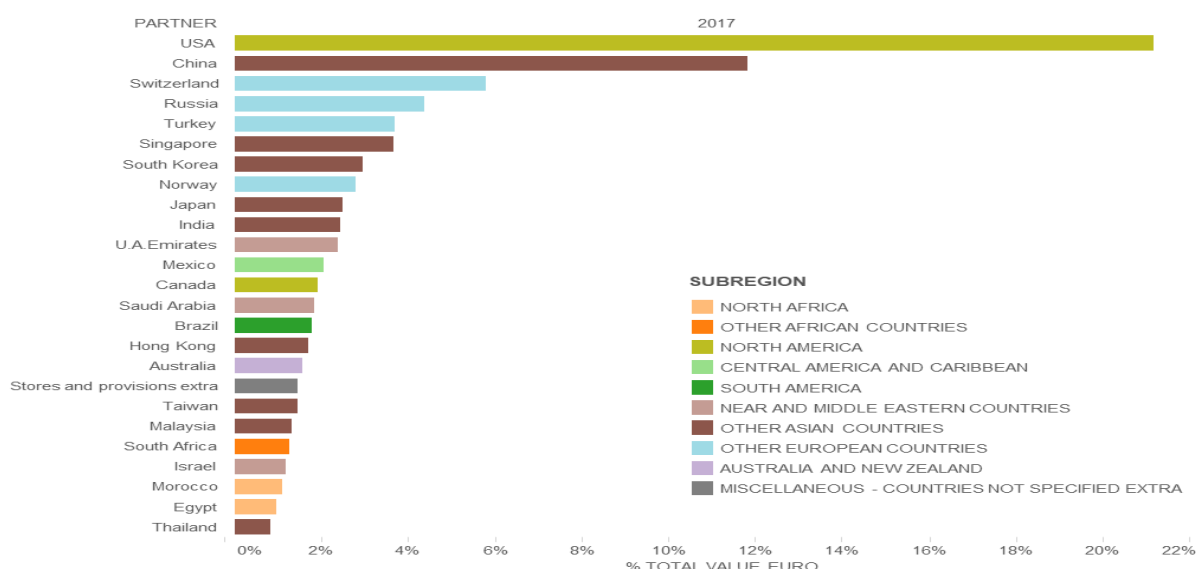


Figure 3: EU dual-use export estimates: top 25 export destination countries and their sub-regions in 2017.

<sup>13</sup> "Stores and provisions extra" are defined as delivery of ships' and aircraft's stores. "Miscellaneous –countries not specified extra" includes countries and territories not specified within the framework of trade with third countries (i.e., these codes are usually used for goods delivered for offshore installations).

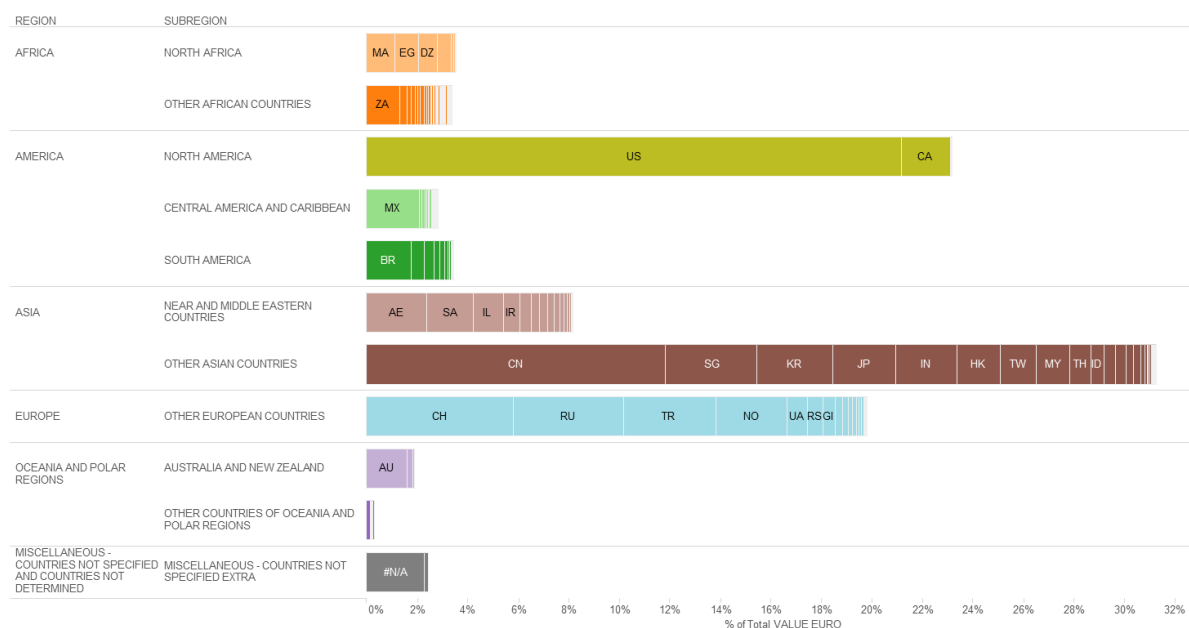


Figure 4: EU dual-use export estimates: destination countries by regions and sub-regions in 2017.

## 4.2. EU dual-use trade control: Applications, licences, denials

In light of Article 19(2), which stipulates that "Member States shall take all appropriate measures to establish direct cooperation and exchange of information between competent authorities with a view to enhance the efficiency of the Community export control regime", the DUCG has exchanged licensing data and information in order to improve the understanding of export controls and their economic effect. Some data collected for the reporting period is reported below; it should be noted however that not all Member States collect all data. The information provided below thus represents approximate estimates of aggregate quantities and values within the limits of the data made available by Member States.

The total value<sup>14</sup> of applications reached EUR 50.2 billion and controlled dual-use exports thus represented 2.7% of total extra-EU exports. Authorised dual-use trade amounted to EUR 36.6 billion, representing 2.0% of total extra-EU exports, with a majority of transactions authorised under individual licenses (approx. 25600 single licenses issued in 2017) and global licenses (by their value). Only a small portion of exports were actually denied: approximately 631 denials were issued in 2017, representing about 1.5% of the value of controlled dual-use exports in that year, and 0.04% of total extra-EU exports.

<sup>14</sup> This figure includes value for licence applications and notifications under General Export Authorisations.

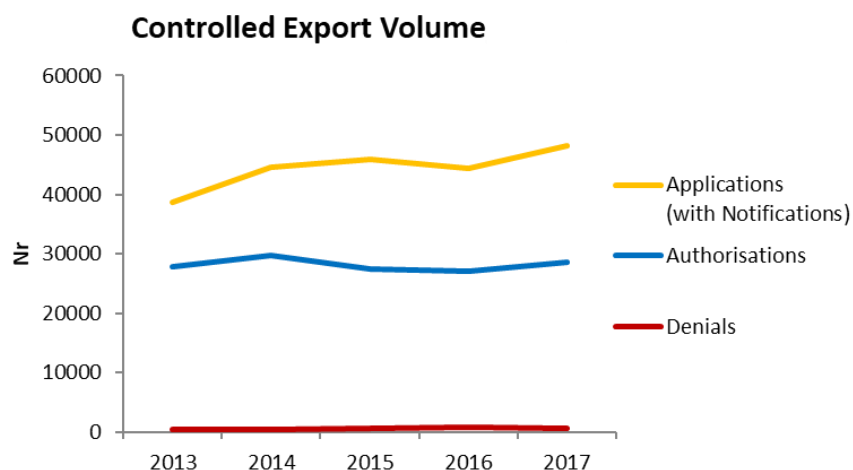


Figure 5: Volume (number) of authorisations and denials in 2013-2017<sup>15</sup>.

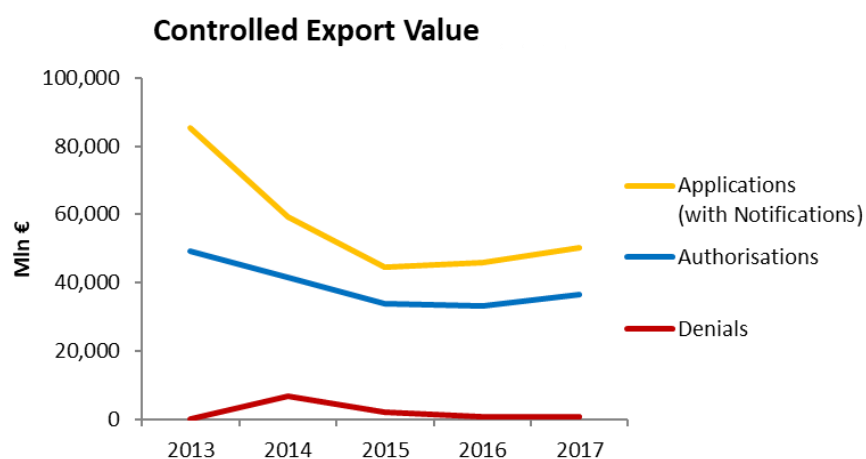


Figure 6: Value (mln EUR) of authorisations and denials in 2013-2017.

<sup>15</sup> In Figures 5 and 6, "Applications" data include all applications for licenses, including notifications under general authorisations, thus providing an indication of "controlled exports", i.e. the value of extra-EU exports subject to an authorisation process. In cases where no application data is available, the charts make use of authorisation data as estimate for application data. "Authorisations" data refers to dual-use exports authorised under individual and global licences. It should be noted that applications do not necessarily correspond to the sum of authorisations and denials, as a number of applications may be cancelled and some applications may not be finalised within the same year. "Denial" refers to the volume and value of denied exports.

#### Authorised Export Volume by License Type in 2017

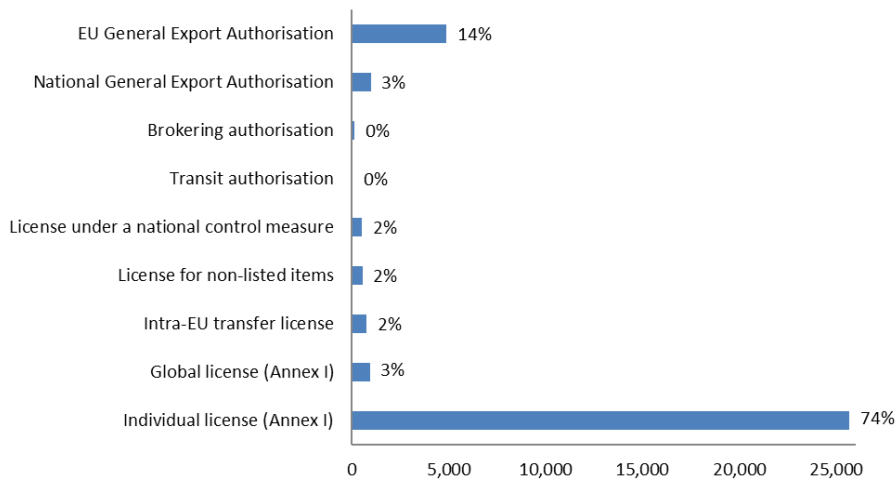


Figure 7: Volume (number) of authorisations per type of licence in 2017.

#### Authorised Export Value by License Type in 2017

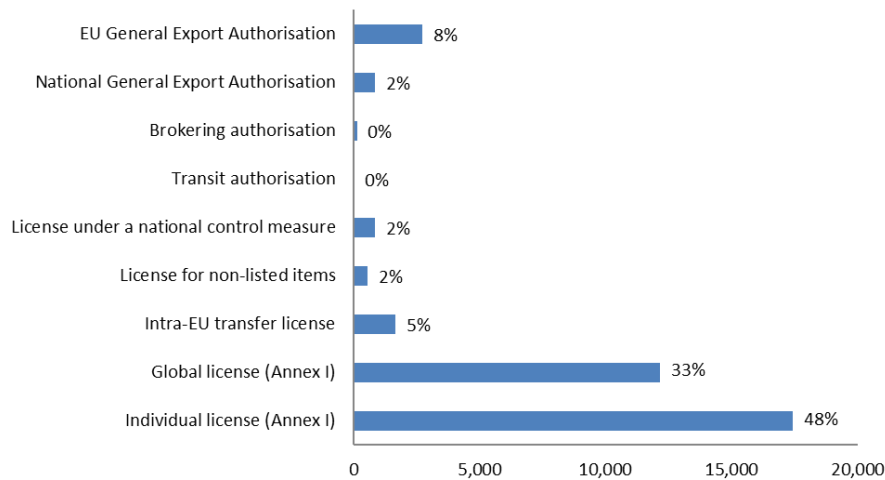


Figure 8: Value (mln EUR) of authorisations per type in 2017.

### 5. Exercise of the Delegation of competence under Article 15(3) of the Regulation

The Regulation confers powers upon the Commission in order to implement some of the provisions of that Regulation. In particular, Article 15(3) stipulates that "The Commission shall be empowered to adopt delegated acts in accordance with Article 23a concerning updating the list of dual-use items set out in Annex I. The updating of Annex I shall be performed within the scope set out in paragraph 1 of this Article. Where the updating of Annex I concerns dual-use items which are also listed in Annexes IIa to IIg or IV, those Annexes shall be amended accordingly". Article 23a(2) further requires the Commission to "draw up a report in respect of the delegation of power not later than nine months before the

end of the five-year period" and stipulates that "the delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period."

The power to adopt the delegated acts listed above was exercised in a regular and timely manner in order to update the list of dual-use items set out in Annex I to Regulation (EC) No 428/2009 so as to ensure full compliance with international security obligations, to guarantee transparency, and to maintain the competitiveness of EU exporters. In line with the Regulation, the Commission has also carried out appropriate consultations during its preparatory work, including at expert level. In particular, representatives from the European Parliament were invited each year to a special session of the DUCG, during which the key changes to the EU control list were presented and explained, and the timeline for the yearly update was discussed.

Since the entry into force of the delegation of competence in 2014, the Commission has adopted five delegated acts as follows:

- Commission Delegated Regulation (EU) No 1382/2014 of 22 October 2014 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items;
- Commission Delegated Regulation (EU) 2015/2420 of 12 October 2015 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items
- Commission Delegated Regulation (EU) 2016/1969 of 12 September 2016 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items
- Commission Delegated Regulation (EU) 2017/2268 of 26 September 2017 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items;
- Commission Delegated Regulation (EU) 2018/1922 of 10 October 2018 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.

## **6. CONCLUSIONS**

The Commission invites the European Parliament and the Council to take note of this report in the context of proper exercise by the Commission of the powers delegated by the EU Regulation.