

ESIA views on the recast Dual Use Regulation

The European Semiconductor Industry Association (ESIA) supports overall the Commission draft recast as it goes in the direction of simplification and harmonisation of the export control framework. We support in particular the new **EU General Export Authorisations No 009 and 008**. The latter should be slightly amended and retained in the legal text. We provide suggestions for these slight amendments in the paragraphs below.

On **human security**, we understand the need to improve the export control mechanisms however we strongly recommend improving the legal text. We are concerned about serious negative consequences on European competitiveness as the proposal is a unilateral one, not internationally aligned, and the legal meaning of many terms is not clear.

Brussels, 8 June 2017

ESIA

ESIA represents the interests of the **European semiconductor industry** and advocates for its international competitiveness. Semiconductors enable key innovative sectors in which the EU has a competitive advantage: automotive, secure IT, aeronautics, secure banking, and others.

As the Member States and the European Parliament continue to examine the proposed recast Dual Use Regulation, ESIA would like to offer its views to assist them in their deliberations:

1. We support the new EUGEAs

The shift from individual/global licences to more EU General Export Authorisations (EUGEAs) is welcome, as well as the efforts to harmonise definitions and to increase transparency among Member States. These reforms hold the promise to reduce burdens for exporters and authorities. Two new EUGEAs that are particularly important and welcome are:

✓ **EUGEA 008 “Intra-company Transmission of Software & Technology”**. To be used for non-critical transfers within a company, it simplifies and cuts IT costs.

→ However, the text should be improved. As it is now, it limits the availability of this EUGEA, as it is not usable for superordinate parent or holding companies. Also, the EUGEA should be valid for intra-company transmissions of *hardware*, in addition to *software* and *technologies*. Samples and prototypes are regularly moved between different locations of the same company, for example for R&D and testing purposes. The ability to move these products quickly is key to successful development, testing and launching of new products.

✓ **EUGEA 009 “Encryption”**. It Improves the global level playing field in significant innovation areas (IoT, connected cars, secure banking). Currently, EU exporters are at disadvantage vs e.g. US competitors. US operators benefit from wide exemptions for exporting encryption.

2. Our concerns

ESIA understands the need to improve the current export control mechanisms in relation to **human rights** (HHRR) concerns, and the EU's strategic foreign policy objectives. However, on this topic the proposal extends beyond the current international commitments, representing a unilateral EU initiative (e.g. the new item list at Section B of Annex 1). We are concerned about the EU working in isolation in an area where international collaboration is crucial: we see risks of negative repercussions on the international competitiveness of European businesses, and on the attractiveness of the EU as a place to do business.

In addition, several new concepts related to HHRR's protection should be clarified. As it stands, the proposed text is too vague for economic operators to be able to comply. Vague expressions increase the risks of divergent interpretations by Member States. This can lead to new restrictive decisions being taken by some Member States only, thereby damaging the EU level playing field.

Improving the text is crucial to achieve legal clarity and avoid disputes. We recommend amending it as follows:

1. The definition of **Cyber-surveillance technology** (article 2.1.b and 2.21) should be revised based on technical parameters, in line with international export control regimes.
2. The following expressions in the **catch-all clause** (article 4) should be clarified in the legal text: "*relevant public institutions*", "*in connection with acts of terrorism*", "*competent authority*", "*serious violations of human rights*". Most concerning are the words '*if the exporter is aware, under its obligations to exercise due diligence*': firstly, such reversal of burden of proof is not acceptable especially under the proposed catch-all extended to HHRR. Secondly, who decides whether the exporter is or should have been *aware* of potential violations? Finally, to which '*obligations to exercise due diligence*' does the text refer? This is not clear.
If it is not possible to clarify these elements, we suggest abandoning such approach. And **rather focusing on defined lists of products and countries, and on measures (e.g. sanctions)** decided by Governments.
3. Clear criteria should be introduced (article 16.2.b.), which the EU would have to follow when amending the new **EU Dual Use list** (Section B of Annex I). When amending the list, the EU should, in particular, consider the provisions of the international export control regimes.

Semiconductors & Export Controls

- ✓ **Semiconductor companies produce cutting-edge technology and products. They enable 30,000 US\$ Bn downstream products and markets.**
- ✓ **Many products classified as Dual Use.**
- ✓ **200.000 direct high-tech jobs in Europe**, and 1 million indirect jobs.
- ✓ **Among the top industries for R&D investment intensity** (24% R&D-to-sales ratio in Europe in 2016, or at least 6 times the EU average).
- ✓ **Global industry and global supply chain.** Need to minimise administrative burden.

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