



Brussels, 21 April 2023

## **FACTUAL SUMMARY REPORT**

**Public consultation**

**Article 26 Regulation EU 2021/821**

**Preparation of guidelines for data collection and annual report on dual-use**

## 1. INTRODUCTION

The EU Dual Use Regulation (EU) 2021/821 (the Regulation) mandates the collection of certain licensing information relevant to the implementation and enforcement of export controls, with a view to enhancing the effectiveness, consistency and transparency of export controls. In particular, Article 26 of the Regulation requires that the annual report should include specific information on the licensing, administration and enforcement of controls in the EU:

[Title]: TRANSPARENCY, OUTREACH, MONITORING, EVALUATION

*Article 26 Regulation EU 2021/821*

1. [...].

*2. The Commission shall, in consultation with the Dual-Use Coordination Group, submit an annual report to the European Parliament and the Council on the implementation of this Regulation, and on the activities, examinations and consultations of the Dual-Use Coordination Group. That annual report shall be public.*

*The annual report shall include information on authorisations (in particular number and value by types of items and by destinations at Union and Member State levels), denials and prohibitions under this Regulation. The annual report shall also include information on the administration (in particular staffing, compliance and outreach activities, dedicated licensing or classification tools), and enforcement of controls (in particular the number of infringements and penalties).*

*With regard to cyber-surveillance items, the annual report shall include dedicated information on authorisations, in particular on the number of applications received by item, the issuing Member State and the destinations concerned by those applications, and on the decisions taken on those applications.*

*The information contained in the annual report shall be presented in accordance with the principles set out in paragraph 3.*

*The Commission and the Council shall make available guidelines on the methodology for data gathering and processing for the preparation of the annual report, including the determination of the types of items and the availability of enforcement data.*

*3. Member States shall provide to the Commission all appropriate information for the preparation of the report with due consideration given to legal requirements concerning the protection of personal information, commercially sensitive information or protected defence, foreign policy or national security information. Regulation (EC) No 223/2009 of the European Parliament and of the Council on European statistics applies to information exchanged or published under this Article.*

4. [...].

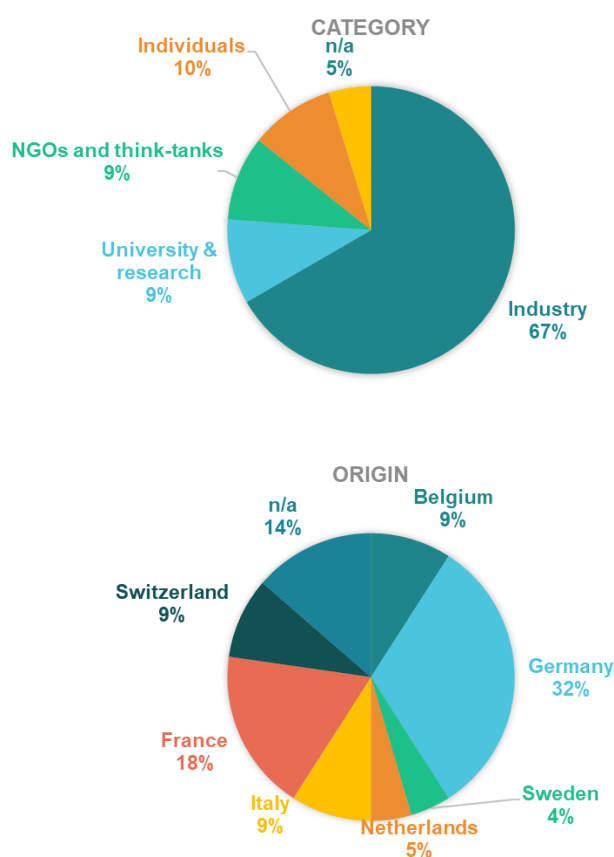
In order to deliver on the Regulation's mandate concerning transparency and annual reporting, the Commission has been working, together with Member States in the Dual Use Coordination Group established under Article 24 of the Regulation (DUCG), on the

preparation of guidelines to support the collection of data from the competent authorities, and to define the methodology for the preparation of the annual report.

The Commission Directorate-General for Trade (DG TRADE) published on 24 January 2023 an invitation <sup>(1)</sup> for stakeholders to submit input and comments until 28 February 2023. The consultation strategy involved use of social media to garner feedback from a broad range of stakeholder communities. This document summarises the feedback received from stakeholders following the invitation to submit input and comments regarding the preparation of the above mentioned guidelines, in accordance to Article 26.2 Regulation EU/2021/821

Overall, the Commission received **21 responses** <sup>(2)</sup>, submitted using the EU Survey online platform set up by the Commission. Most of the responses came from business and industry associations, in particular from the ITC and digital sectors, as well as from NGOs and research organisations.

An overview of the responses by category and origin of stakeholders and a summary of the feedback received is presented below.



List of stakeholders by category <sup>(3)</sup>:

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<sup>(1)</sup> [https://policy.trade.ec.europa.eu/consultations/guidelines-data-collection-and-preparation-eu-annual-report-dual-use-export-controls-under\\_en](https://policy.trade.ec.europa.eu/consultations/guidelines-data-collection-and-preparation-eu-annual-report-dual-use-export-controls-under_en)

<sup>(2)</sup> <https://ec.europa.eu/eusurvey/publication/Dualuseexportcontrolreport2023>

<sup>(3)</sup> The list does not include anonymous contributions

- **Industry associations:** ESIA (semiconductors EU), ASSONIME (joint stock companies Italy)
- **Companies:** Air France, Safran Aircraft Engines, Europrop International GmbH, Schneider GmbH & Co. KG, TE Connectivity
- **University & Research:** European Export Control Association for Research Organisations (EECARO), Università degli Studi di Genova
- **NGOs and think-tanks:** Stockholm International Peace Research Institute (SIPRI), Access Now, Amnesty International, FIDH, Human Rights Watch, Privacy International, Reporters Without Borders

The Commission services have analysed the responses, all of which will be taken into consideration in the follow up work for the preparation of the guidelines in accordance to Article 26 of the Dual Use Regulation <sup>(4)</sup>. This document solely provides a summary of the feedback from stakeholders. It does not present any position of the Commission or its departments. The document does not bind the Commission.

## 2. FEEDBACK ON THE RELEVANCE OF THE INITIATIVE

The consultation has shown that there is **general support** for the work that the Member States and the Commission are doing to prepare new guidelines for the collection of data and preparation of the EU annual report on dual-use export control.

Contributions vary by topic, depending on the concerned sectors. Most of the inputs address cross-cutting policy aspects, while some focus on aspects of export control practices that are not strictly concerning the preparation of the EU annual report.

Industry stakeholders note that public reporting should: (a) help companies comply with the Dual-Use Regulation, especially SMEs, but also (b) better understand the differences and improve consistency of decisions across Member States' practices, (c) without adding administrative burden to exporters.

Civil society, think-tanks and NGOs point to the need to promote further transparency with the annual report, while protecting of personal data and interpreting exceptions to data disclosure narrowly.

University and research performing organisations who participated in the survey believe that public reporting can help: (a) clearly define licence management for the 'knowledge-export sector' and (b) increase awareness and enhance ICPs (internal compliance programmes) in research organisations.

## SUMMARY OF ISSUES RAISED BY STAKEHOLDERS

***Question 1: What are your general expectations with regard to transparency and reporting under the Dual Use Regulation?***

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<sup>(4)</sup> In February 2022 the Commission and the Member States have set up a technical expert group under the Dual Use Coordination Group, which is working on the preparation of the guidelines. Stakeholders' input are being discussed by the expert group, which aims at finalising the guidelines by mid-2023. The guidelines will be made available for the preparation of the EU annual report in 2023.

Industry stakeholders see the EU annual report as a tool to review information about licenses practices across the EU, help exporters comply with export control rules and better understand differences of practices across jurisdictions, while reducing administrative burden, also in terms of gathering data from exporters.

These stakeholders emphasise that the annual report should be compiled in a way that allows to protect confidential business information and personal data from sensitive disclosure. Further information on how Member States monitor and audits the dual-use compliance of local companies is also considered useful, in particular by industry stakeholders.

Industry stakeholders also point to the opportunity of using the annual report for improving knowledge of national practices in the control of cyber-surveillance exports. While the EU annual report is perceived as a useful information tool, businesses note that it could also give indications on trends and developments, for economic analysis and to enable better-informed risk-assessment across industry and research.

NGOs note that reporting detailed information about exports of dual-use items and technologies can enable stakeholders get better oversight of how the controls that Member States have in place are being implemented. Reporting on enforcement measures can also offer a better picture of the way in which export control violations are being detected, investigated, and prosecuted in the EU.

Promoting transparency in the trade of cyber-surveillance technologies and applying relevant exceptions to disclosure strictly - is considered critical to ensure these items are not being used in third countries in connection with internal repression or the commission of serious violations of international human rights and humanitarian law.

Information about denials of export licences – in particular reasons, criteria and destinations - are also considered useful according to several submissions, while the overall value of licence denials seems to be underestimated according to some contributions received.

University and research organisations point to the role of annual reporting to level the playing field across the European Union regarding the application of export controls. Anonymous data and lack of information on grounds for denials are perceived as less useful and effective for learning and risk-assessment purposes by companies' export control officers.

Following the introduction of sanction-related export restrictions on dual-use and advanced technologies to Russia and Belarus, industry stakeholders recommended to include specific information about their enforcement.

***Question 2: Do you have specific comments as to how the elements mentioned in Article 26 of the EU Dual Use Regulation should be addressed?***

When considering how to collect and report data on exports of dual-use items, some industry stakeholders point to the EU annual report for military items <sup>(5)</sup> as example where both authorisation and export data are provided.

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<sup>(5)</sup><https://www.consilium.europa.eu/en/documents-publications/public-register/public-register-search/results/?WordsInSubject=&WordsInText=&DocumentNumber=16164&InterinstitutionalFiles=&D>

Some note that several Member States appear to struggle with collecting and reporting data on actual exports. Those that can compile and report this data effectively have domestic systems in place which require companies to report on their use of export licenses they have been granted. These stakeholders further note that - unless all Member States concerned have systems in place which require companies to report on the use of the licenses– or are willing to adopt such a system – it would not be possible to collect and report comparative data on actual exports of dual-use items. In this respect, common standards on how exporters report data to the licensing authorities is considered key to improve coherence and comparability.

However, according to comments received, licensing information – rather than data on actual exports – provide a more meaningful indication of the way in which export control authorities are interpreting and applying EU and national export control criteria.

Data on the financial value of export licenses and exports is considered of less relevance when assessing how authorities are applying EU and national rules, financial values are often not comparable and in some case could lead to reveal sensitive information.

Stakeholders point to details of the licensed and exported items and the type of end-user and end-use as being of far greater utility from a public transparency and oversight perspective. Providing information on revoked licenses is also considered useful.

NGOs advocate for greater level of detail with regard to the export licenses for cyber-surveillance items - including about exporters, end-users, destinations, value, decisions taken and reasons for denial – subject to limited application of applicable exceptions and upon providing relevant justifications.

The current two-year gap in the annual report is perceived as reducing the efficiency of public information <sup>(6)</sup>.

Stakeholders' contributions also point to the principles of Regulation 223/2009, namely 'reliability' of statistics, as underlying principles in the preparation of the annual report, "meaning that statistics must measure as faithfully, accurately and consistently as possible the reality that they are designed to represent and implying that scientific criteria are used for the selection of sources, methods and procedures".

***Question 3: Bearing in mind the feasibility of data gathering, concerning the different types of authorisations (such as individual, global, national and Union general authorizations), which kind of information is more relevant for public reporting and transparency, and why?***

Responses vary across stakeholder categories.

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<sup>(6)</sup> EU annual export control reports have been prepared since 2013 and include licensing data collected through a dedicated mechanism developed with Member States on a voluntary basis. Licensing data shared by Member States in 2022 concern the year 2020 (two-year gap). With the new methodology under Regulation 2021/821, the two-year gap will be closed and the future EU annual report will include licensing data from the year before.

Stakeholders generally acknowledge that public reporting on different license categories could be adjusted to the underlying security concerns relevant to each category of license. Stakeholders note that publishing more detailed information about individual and global licenses – e.g. including countries of destination - is more relevant to improve the level playing field across the EU, compared to information on values of exports. However, some note that ‘over-reporting’ should be avoided due to concerns regarding administrative burden.

Information on administration that is considered useful by exporters including data on item classification requests and overall staff numbers working on export control.

Some stakeholders from the research community note that the report could be improved to include additional information, in particular with regard to intangible transfers, while others acknowledge that collecting data, e.g. value of transactions, of intangible transfers (software and technology) remain challenging, as there is no customs declaration available for such intangible transfers.

NGOs call for further transparency of information concerning export of dual-use cyber-surveillance items, possibly through regular reporting throughout the year, while “[t]hese reports should at a minimum include the number of license applications per item, the exporter name, a description of the end user and destination, the value of the license, and whether the license was granted or denied and why.”

### **3. CONCLUSION**

The Commission services thank all stakeholders for their input, which will help in the finalisation of the relevant guidelines with Member States’ authorities, which will be published, and the preparation of the next annual report in line with the new Dual-Use Regulation.

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