SWP

Dual-use reform: How to "future-proof" EU export controls
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1) **Europe is still one of the main exporters of surveillance technologies:** even after changes to the Wassenaar arrangement at the end of 2013, European companies have continued to export harmful surveillance technologies, leading to regular scandals.

2) **2013 Wassenaar changes remain contested:** the definition of intrusion software infrastructure (4.A.5, 4.D.4, 4.E.1.c) is considered too broad and likely to encompass legitimate research. By contrast, the scope of control for IP network surveillance systems (5.A.1.j) is considered to be defined far too narrow.

3) **The human security approach** taken by the proposed dual-use regulation represents an important next step in dealing with the challenge of harmful surveillance technologies. While considering human rights in export control decisions is not new, providing a clearer articulation on how to consider human rights (Art. 2. 1.b & Art. 14) will lead to greater harmonisation and legal certainty when implementing controls.

4) **The EU autonomous list** (Art. 3) is another instrument that can lead to greater harmonisation of the implementation of export controls in Europe and can contribute to ensuring a level playing field. In the last four years, several EU member states like France and Germany were unable to make changes within Wassenaar and were forced to develop 'national' export controls as an adequate multilateral forum was missing.

5) **Requiring Due diligence** from exporters reflects common business practice and existing EU commitments on business and human rights. Making such commitments legally binding ensures that companies cannot state one thing in their licensing applications, while making different promises in their marketing material.

6) The **targeted human security control** (Art. 4) is a logical continuation of existing catch-all controls by ensuring that, if companies have 'positive knowledge' of serious human rights violations, they are required to request a license.

7) **Accountability deficit:** expanding the scope of catch-all mechanisms also increases the discretion of member states in implementing export controls. Greater transparency and accountability in the implementation of export controls is needed to counter-balance the greater discretion given to member states.

8) **Public transparency regarding licensing decisions is still lacking.** Both in the light of expanding controls and uneven levels of transparency among EU member states, full public transparency of accepted and rejected license applications is necessary.

9) **Promoting Encryption** is an important goal shared by both industry and civil society in Europe. Thus, including a general license (Art. 10.1.d) for encryption technologies is an important step forward in the debate on removing encryption controls.

10) **EU standard setting:** the EU plays an important role in setting standards for international trade. Given the EU's existing international commitments on human rights and the European Charter of Fundamental Rights, dual use controls can be regarded as a mechanism to support trust in international trade.

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* Remarks made in a personal capacity by Dr. Ben Wagner to the Committee on International Trade (INTA) of the European Parliament for the hearing on Dual-use reform: How to "future-proof" EU export controls on 21. March 2017.