



Evaluation of Regulation (EU) 2021/821 on the Control of Exports of Dual-Use Items

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I. PURPOSE AND SCOPE

This position paper has been prepared by the EU Chapter of the International Sanctions and Export Control Society (ISECS) to contribute to the European Commission's evaluation of Regulation (EU) 2021/821. Drawing on the practical experience of contributing members, it identifies implementation challenges and proposes targeted improvements to support effective, proportionate and consistently applied EU dual-use export controls.

The paper presents the EU Chapter's consolidated policy recommendations. It does not necessarily reflect the views of every ISECS member, contributor's employer or affiliated organisation, and does not purport to represent all EU exporters or industry sectors. References to public authorities, legislation or guidance do not imply endorsement of this paper by any government or EU institution.

Statements advocating changes to the Regulation, licensing arrangements or administrative practice are proposals for consideration and should not be read as descriptions of existing legal permissions, exemptions or obligations. The paper is not an official interpretation of EU or Member State law and is not intended as a comprehensive statement of applicable requirements.

This paper is provided for policy discussion and general information, not as legal advice or transaction-specific compliance guidance. Legal references and observations reflect the information available at the date of the paper and may be affected by subsequent developments. Readers remain responsible for assessing the requirements applicable to their activities and should consult current official sources and obtain qualified legal advice where appropriate.



I. ABOUT ISECS AND ITS EU CHAPTER

The International Sanctions and Export Control Society ("ISECS") is a division of ECSA Group LLC, a Public Benefit Company, and the only organisation of its kind dedicated to helping industry enhance compliance with international sanctions and export controls. Founded originally in 2022 in Europe, ISECS brings together a worldwide network of industry leaders, current and former government regulatory and enforcement officials, attorneys, and experienced compliance professionals across five continents, working collaboratively to enhance compliance with export controls and sanctions while protecting international security.

The EU Chapter of ISECS is the Society's dedicated European network, convening trade compliance practitioners, legal experts, and industry representatives operating in Belgium, Finland, France, Germany, Italy, Malta, the Netherlands, Spain and Sweden. Through its working groups, the EU Chapter monitors the practical implementation of EU export control legislation, identifies operational and legal difficulties encountered by exporters, and consolidates industry perspectives into concrete recommendations for policymakers, including in the context of the European Commission's evaluation of Regulation (EU) 2021/821 (the "Dual-Use Regulation" or the "Regulation").

II. PURPOSE AND CONTEXT OF THIS PAPER

The European Commission launched, at the start of the year, a formal evaluation of the Dual-Use Regulation currently in force. This evaluation process includes a consultation of Member States beginning in June, and national authorities have in parallel consulted industry federations and exporter representatives to gather views, positions and proposals on the current Regulation and its desirable evolution.

That consultation was structured around six questions:

- the overall assessment of the Regulation and its implementation;
- provisions that merit reinforcement;
- gaps, imprecisions or overly complex provisions;
- possible evolutions to the text of the Regulation;
- possible evolutions to its implementation; and
- disparities or mechanisms liable to create or reinforce distortions of competition between EU operators, or vis-a-vis non-EU competitors, together with measures that would strengthen harmonised application of export controls across the EU.

Drawing on that consultation process and on the practical experience of its members, the EU Chapter of ISECS sets out below a consolidated set of positions and proposed changes to the Dual-Use Regulation and its implementation. The recurring theme across industry contributions is that the Regulation, in its current text, requires targeted clarification and more consistent implementation across Member States rather than a wholesale rewrite, although several structural issues merit the Commission's attention.

III. GENERAL OBSERVATIONS: NEED FOR GREATER HARMONISATION

One perspective raised in the consultation is the potential interest of broadening export control considerations to economic security and EU sovereignty, coupled with a stronger coordinating role for the Commission, including in connection with free trade agreements and mutual recognition arrangements. The EU Chapter notes this as a live policy question warranting further debate rather than a settled industry position.

For most industry contributors, the Regulation requires adaptations in its implementation more than in its drafting, although the Regulation is at times still perceived as complex to interpret or apply in practice. Few concrete examples include:

- Disparities between Member States in the timeframes and procedures for processing licence applications represent a genuine competitiveness issue for operators; the Commission should actively address the risk of forum shopping between national licensing authorities. This should include the export via so-called privileged third countries such as Switzerland.
- Better harmonisation of practice between Member State authorities is needed, through reinforced intra-EU communication on licence refusals and grants, to limit divergent interpretations of the same control rules.
- Consideration should be given to establishing a structured mechanism through which Member State authorities may coordinate positions on recurring interpretative issues and publish agreed guidance where appropriate. Such a mechanism would help reduce inconsistent application of the Regulation across the Union.
- The ongoing generalisation of the obligation to maintain an Internal Compliance Programme (ICP) increases the level of responsibility placed on operators for their overall compliance, but should be matched by proportionate, and not increased, administrative oversight.
- The Commission should develop common EU-level guidance on Internal Compliance Programme expectations, including minimum standards and assessment criteria. Greater alignment would reduce divergent national approaches and allow companies operating across multiple Member States to implement more consistent compliance frameworks.

- The duration of individual licence validity should be harmonised across the EU.
- Greater transparency regarding licensing practice would further support harmonized implementation. The Commission and Member States should explore mechanisms for publishing anonymized licensing decisions, practical guidance, and common interpretations of recurring classification and licensing questions.
- The Commission should promote greater convergence in the framework governing national general export authorisations (NGEAs), including their scope, eligible destinations, conditions of use and associated compliance requirements. This would reduce incentives for exporters to structure transactions around the most permissive national regime, limit regulatory arbitrage between Member States and support a more level playing field across the Union.
- The Commission should publish more guidance on key concepts of the Regulation. One example often mentioned in the definition and scope of "technical assistance", which is interpreted variably, creating legal uncertainty for operators active across several Member States

Regarding catch-all controls, the ISECS welcomes the regular communications¹ made by the EU Commission mapping EU Member States' decisions to impose catch-all controls on non-listed items and cybersurveillance items, which provides very valuable information to operators, exporters still note that remaining lack of visibility on the practical application of the catch-all clause generates legal uncertainty and should be addressed through clearer criteria and guidance. In this context, a harmonized application of the catch-all controls and a transparent communication of this application would allow operators to identify critical items in advance.

ISECS further notes that the controls on non-listed cyber-surveillance items under Article 5 of the Regulation present significant practical challenges for exporters. The definition of "cyber-surveillance items" in Article 2(20), the determination of exporter "awareness" under Article 5(2), and the due diligence requirements remain subject to divergent interpretations across Member States. The Commission Guidelines of October 2024 (Recommendation (EU) 2024/2659) provide a welcome first step, but further harmonisation of Article 5 implementation — including the criteria for publication of the list under Article 5(6), which requires unanimous consent of all 27 Member States — is needed to ensure a level playing field.

The Regulation also introduces EU-level controls on brokering (Article 6) and transit (Article 7) of dual-use items, areas where significant disparities in national implementation persist. Only some Member States have exercised the option under Article 6(2) to extend brokering controls to non-listed items, and divergent approaches to transit controls under Article 7

¹ E.g. Commission Information Note C/2026/2595 — 8 May 2026

create an uneven regulatory landscape. ISECS recommends that the Commission assess these disparities and promote greater harmonisation of brokering and transit controls.

Finally, the increasing interaction between the Dual-Use Regulation and EU sanctions regimes — in particular Regulation (EU) No 833/2014 concerning Russia — requires attention. Companies face complex compliance challenges when navigating overlapping but differently structured control regimes. The evaluation should consider how to improve coherence between the Dual-Use Regulation and sanctions instruments, including through aligned definitions, coordinated licensing procedures, and clear priority rules.

IV. POINTS REQUIRING ADAPTATIONS

Most operators indicate that adaptations and facilitations are specifically needed regarding:

- Control of intangible technology transfers:
 - The rules applicable to the transfer of intangible technology generate legal uncertainty, particularly regarding collaborative work, staff mobility and remote or nomadic working arrangements. The Commission should publish guidelines addressing these scenarios directly. Multinational research and development environments present additional challenges that are not adequately addressed by the current framework. The Commission should provide guidance on the application of export controls in collaborative R&D settings involving globally distributed research teams, shared digital development platforms, scientific databases, and cross-border innovation projects. Particular attention should be given to the realities of modern life sciences, biotechnology, chemical, and technology research environments where innovation increasingly depends on globally integrated research structures and digital collaboration tools.
 - The Regulation should further clarify the application of export controls to access to controlled technology by internationally mobile employees, researchers, contractors and visiting scientists working within the European Union. Divergent interpretations among Member States regarding such access generate compliance uncertainty and may impede legitimate research cooperation.
 - Additional guidance should be issued on the distinction between publicly available scientific information, fundamental research activities, and controlled technology. Such guidance would be particularly beneficial for companies, research institutions, and universities engaged in international scientific collaboration and publication activities.

- ISECS suggests the removal of the requirement to delete technology following an authorised intra-group transfer, as in practice technology is not deleted, remains in use throughout the product life cycle, and continues to be developed further by the recipient entity. Such requirement is hardly implementable in practice.
 - The scope of intra-group technology transfer provisions should be extended to cover all companies within a corporate group, rather than being limited to direct parent, subsidiary or sister companies, in recognition of the highly complex shareholder structures typical of multinational groups.
 - The scope of allowed destinations for intra-group transfers should be increased, excluding only sensitive countries. The framework should expressly cover scenarios where employees are on business travel or working remotely from any country listed as an eligible destination under the relevant licence, other than embargoed destinations.
- Control of cloud-based services and data:
 - ISECS draws particular attention to the treatment of cloud and AI-enabled environments under the Regulation, an area where the current legal framework is poorly adapted to how technology is deployed.
 - The Regulation should adopt an access-based approach to cloud environments: the storage, transmission or processing of data in the cloud should not constitute an export. An export should be considered to occur only when controlled technology is made accessible to a person located outside the EU. It is noted that the current export definition in Article 2(2)(d) of the Regulation — which includes "making available in an electronic form" software and technology to persons outside the EU — has been interpreted broadly by authorities such as BAFA to cover scenarios where a mere possibility of access from a third country exists. While national general authorisations have partially addressed this issue, a harmonised EU-level solution is needed. Such an approach should also consider the reality of modern work, in which EU employees may access cloud-stored data from a third country.
 - Responsibility of cloud service providers hosting controlled data. The allocation of export control responsibility between cloud service providers and their customers remains unclear under EU rules, in contrast with the greater clarity offered by the US Export Administration Regulations (EAR) on this point (currently, the cloud service provider bears non responsibility).
 - Current cloud architectures and AI-enabled services rely on globally distributed vendor infrastructure whose location may change dynamically and

is often outside the customer's control. Companies frequently cannot limit cloud processing or storage to predefined jurisdictions while remaining responsible for export control compliance, which creates significant legal uncertainty and administrative burden without a corresponding security benefit. For example, service providers may migrate customer data from server-based to cloud-based environments without customer visibility into, or control over, the underlying infrastructure location. ISECS calls for the new Regulation to address this reality.

- AI and large language model solutions increasingly process technical data in cloud environments without permanent storage, making licensing of constantly changing cloud configurations impractical and placing EU companies at a competitive disadvantage relative to non-EU competitors. ISECS suggests that the new Regulation also addresses this reality.
 - Further guidance should be developed regarding the treatment of controlled technology in artificial intelligence environments, including AI model training, retrieval-based systems, digital assistants, and other emerging AI-enabled workflows. Exporters currently face significant uncertainty regarding how traditional export control concepts should apply in these contexts. Particular uncertainty exists where controlled technology is processed, analyzed, or referenced by AI systems without traditional transfer, storage, or disclosure mechanisms.
 - The Regulation should recognise that multinational companies increasingly rely on globally managed IT and cybersecurity functions that may provide remote system administration, maintenance, monitoring, incident response, and technical support across multiple jurisdictions. Additional guidance is needed to clarify when such activities may constitute controlled technology transfers or technical assistance under the Regulation. This would help preserve international scientific cooperation while maintaining appropriate safeguards against proliferation risks.
- **Refinement of controlled technology**
 - Operators of software and in particular SaaS often face difficulties in assessing if their software is covered by the Regulation. While in most cases the software does not fulfil functions included in Chapter 5 of Annex I of the Regulation, it is already hard to determine for operators if the exemptions set out in the General Software Note and the Cryptography Note apply. Particular clarification regarding the distinction between executable software and object code would avoid further confusion on the operator side.
 - ISECS therefore encourages the Commission to simplify the exemptions under the General Software Note and the Cryptography Note – either by combining

the exemptions in order to allow operators for a clearer assessment of its application or by further guidance describing a step-by-step assessment for operators.

- Further guidance on the provision of SaaS could help operators to determine if the provision of these services constitutes an export. This should not only be limited to SaaS applications on demand, but as well to services freely available (which in turn may as well fall under the exemptions set out in the General Software Note).

V. FACILITATION MEASURES

ISECS encourages further facilitation:

- the creation of additional general licences and the development of global licences, for intra-group transfers, following the approach already adopted by certain Member States.
- a general licence for intra-company transfers of technology (comparable to existing national general licences in Spain and Germany) should be made available on a harmonised basis across the EU.
- A "trusted exporter" mechanism, similarly to the AEO customs certification, should be established at EU level to provide streamlined treatment for operators with a demonstrated compliance track record.

VI. CONCLUSION

The EU Chapter of ISECS supports the European Commission's evaluation of Regulation (EU) 2021/821 as a valuable opportunity to strengthen the coherence, predictability and competitiveness of the EU export control framework. The priority, in the view of the EU Chapter, is not a wholesale revision of the Regulation but a combination of targeted clarifications, harmonised implementation across Member States, and pragmatic facilitation measures, in particular for intra-group technology transfers and cloud-based technology environments where the current framework has not kept pace with how technology is actually used. The EU Chapter and its members stand ready to support the Commission and Member State authorities in developing and refining these proposals throughout the evaluation process.

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