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## **CECIMO Position Paper: Review dual-use export controls**

### **Summary**

This paper explains the position of CECIMO, the European Association representing the Machine Tool industries, regarding the review of the Regulation of the European Parliament and of the Council setting up a Union regime for the control exports, transfer, brokering, technical assistance and transit of dual-use items (recast), with Annexes.

**CECIMO agrees with the need for an EU legislative intervention to modernise the current export control regime and harmonise its implementation across member states.** However, we believe this proposal risks putting **the legitimate European machine tool builders at a significant competitive disadvantage on a global scale, by increasing the administrative burden for the European manufacturers.** The introduction of a **catch-all** provision establishes an **unquantifiable, subjective, potentially inconsistent in time obligation of authorisation** going **beyond the scope of the control list.** This entails delivery delays, money losses and hinders the competitiveness of European machine tool builders, as a result. Moreover, leaving the judgements on illicit use to businesses creates a margin for interpretation in a competitive environment, which can negatively affect strategic decision making, depending on the risk aversion of the companies, and entails possible business losses.

Although CECIMO strongly supports the European policy makers in the enforcement of human rights, and the prevention of terrorism, businesses should not be responsible for making political decisions, while this endeavour belongs to political actors. **The sanctions regimes/ embargos are better tools** to foster democracy and the respect for the rule of law and human rights.

Our input is built on the extensive experience of CECIMO-based machine tool builders in dual-use goods trade and willingness to promote the interests of a competitive EU industrial sector worldwide. Therefore, CECIMO recommends:

- **Replacing the catch-all provision by lists of sanctioned countries and products,** to avoid unreasonably burdensome administrative procedures.
- The term “**due diligence**” is **too vague** and **should be replaced with a list of unambiguous criteria** against which the trade partner will be checked, to ensure legal certainty and leave less space for subjective interpretation.
- The revised regulation should assure **a greater degree of harmonization and consistency in the implementation** of the export controls across the member states.
- We welcome the introduction of additional **general export authorisations (EUGEA), single authorisations for large projects and longer validity periods.**
- The EU decision making bodies should aim at ensuring a **fairer global playing field for dual-use machine exporters** and create an export control **regulatory framework that does not entail competitive disadvantages for EU companies.**

## Context and Background of the European Machine Tool Industry

CECIMO, the European Association for the Machine Tool Industries, welcomes the European Commission's initiative to revise the regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items, currently set by the Regulation 428/2009. Indeed, a modernised regime should aim at harmonising the implementation of export controls approval processes among member states. Nevertheless, in its current form, **it increases the administrative burden for the European machine tool exporters and undermine their competitiveness on an already uneven global playing field.**

CECIMO represents 15 national associations of European machine tool builders based in the EU, EFTA and Turkey. European machine tool production accounts for 36% of the world's output, which is the largest share in the global market, followed by China and Japan. European machine tools are considered as the globally leading manufacturing technology, together with Japan. Although, recently Taiwan and Korea have caught up with Europe and Japan. Leading technology means that most of the machine tools are classified under the current dual use regimes. China has not yet reached this technology level.

In 2016, the EU28 total exports amounted to **10.4-billion-euro** worth of **dual-use machine tools**, which accounts for **64% of the total European Union's machine tool exports.**

The dual-use scope includes a wide range of sectors, among which manufacturing. Curiously, the least important is the defence industry. The machine tools sector constitutes the backbone of modern manufacturing and nearly 70% of machine tools qualify as dual-use goods, under the EU export control regime. They are the prerequisite for competitive and energy efficient industrial manufacturing processes.

The current regime creates a common basis for the control of export, brokering, transit and transfer of dual-use items. These rules are directly applicable to our exporters. However, member states can introduce additional controls, "gold-plating" the EU rules, especially in respect with enforcement and applicable penalties. Often, the implementation and the approval procedures considerably vary across the member states. The licensing authorisations are always issued by national competent bodies. For instance, several countries implement additional controls on non-listed goods for reasons of public security or human rights, extend transit, brokering control provisions or create national lists of strategic goods and services. This mixed-regime functioning establishes several control layers that negatively affect the legitimate trade and entail a competitive disadvantage for the EU machine tool builders.

The EU common list of controlled items (Annex I) is updated on an annual basis and is based on hard facts, on clear and objective technical data. These updates should, by all means, remain coherent with the initial member states' commitments and facilitate the referencing for the national authorities. Any local divergence will certainly hamper the European Union's competitiveness on the global dual-use trade. On the other hand, the applications for licensing authorisations are unreasonably **time consuming and imply a big administrative workload for the European machine tool exporters.** Manufacturers in member states with a lean speedy process gain a significant advantage over their peers in countries with a more bureaucratic procedure.



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Recently, the European Parliament voted on the report of the International Trade Committee, opening a triologue. The Council's Working Party on Dual-Use Goods is now working on the proposal.

## Changes of the proposal and their consequences on the machine tool industry

The proposal introduces a **catch-all provision**, with an obligation of an authorisation going beyond the scope of the control list, notably including "possible misuse in connection with acts of terrorism or human rights violations" in its article 4. As a result, the exporter and the national licencing authority are obliged to assess diligently whether the exported machine is intended for misuse. This means that a non-quantifiable subjective condition is introduced, which can also change over the time of the project execution. The current EU sanction regime, overriding the dual use export licencing is a far better tool, commonly applied across the member states.

For us, shifting the responsibility of an end-use verification for the respect of the human rights in the country of destination to the exporter and the national licencing body is questionable, especially given that soft facts leave a margin for interpretation. Certainly, we, as CECIMO, agree and strongly support the European policy makers in fighting against weapon proliferation, terrorism and safeguarding the human rights, but businesses should not carry the burden of such a political decision, when it clearly belongs to the control sphere of political actors.

Please note that in 2012, the European Parliament proposed a similar catch all provision, that did not end up in the final version of the Regulation 599/2014, amending the Regulation 428/2009, for understandable reasons. The vague scope of such measure creates too much uncertainty and puts the responsibility of preserving human rights into the hands of the exporter, the least appropriate stakeholder to undertake this mission.

Our industry fears that the intended measures put the European machine tool builders at a significant disadvantage, due to **additional control layers, slow burdensome administrative processes** and an already existing uneven global playing field.

The most difficult business aspect of the export controls is the "judgement of use" when taking important strategic decisions. Risk averse machine tool builders will make these judgements on end-use in a strict manner, potentially losing business to competitors with a different interpretation of rules. Leaving so much space for interpretation to businesses negatively impacts the healthy competition globally, but also within the Single Market.

Non-EU exporters, such as the industrial Asian nations, are likely to benefit from their laxer regulatory framework for dual-use goods exports, as it is already the case. We already see these other major players in the machine tool industry not enforcing the same level of export controls. Currently, **Germany and Italy** are in the **top 7 world exporters of dual-use machine tools**. But we are facing **fierce competition** from our Asian counterparts. Japan can outperform Germany (the world leading exporter), as it previously happened. We should not discard the US industry precedent of relentlessly seizing export opportunities. New competitors pose a threat of filling the gaps left by European exporters facing additional administrative hurdles.

Although the proposal tries to minimise the red-tape for intra-EU trade, it risks doing the exact opposite in respect to exports to non-EU destination countries, by imposing disproportionate measures and an ambiguous scope. This can **entail important delays in delivery**, up to several



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months, which means big **profit losses** and unproportionate **punishments for legitimate trade operations**. That is why, CECIMO proposes the following recommendations.

## Policy Recommendations

- CECIMO believes that **lists** of sanctioned countries and products, updated with a reasonable frequency, should be given preference over a **catch-all provision**. Establishing clear objective hard facts is the only correct way to find the right balance between ensuring an efficient export control and avoiding an unnecessarily burdensome administrative work for legitimate machine tool exports.
- In our opinion, the term of “**due diligence**” is too ambiguous and should be replaced with a list of **clear and objective criteria** against which the exporter and the national licensing body can check the trading partner, to avoid misinterpretations and ensure **legal certainty**. Exporters need unequivocal measures when making strategically important and costly trade decisions with 3<sup>rd</sup> countries.
- The revised Regulation should establish a greater degree of harmonization, a consistent implementation of the export regime controls and aligned licensing procedures throughout the Single Market.
- We welcome the introduction of additional general export authorisations, single authorisations for large projects and longer validity periods.
- To conclude, the EU decision making bodies should aim at ensuring a fairer global playing field for dual-use machine exporters and create an export control regulatory framework that does not entail competitive disadvantages for EU companies.

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