

IV. Developments in the European Union's dual-use and arms trade controls

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The European Union (EU) is currently the only regional organization with a common legal framework for controls on the export, brokering, transit and trans-shipment of dual-use items and also, to a certain extent, military items. The key elements of this legal framework are the EU's arms embargoes, dual-use regulation, foreign and direct investment (FDI) screening regulation, common position on arms exports, directive on intra-Community transfers, and anti-torture regulation. Developments in EU arms embargoes are addressed in section II of this chapter. During 2021 the EU adopted a new version of the dual-use regulation and began clarifying how it will be implemented at the national level. The EU and its member states also reported on steps taken to implement the FDI screening regulation, which entered into force in 2020. The EU and the United States took steps to develop expanded processes of cooperation and consultation on export controls. No major developments took place in the common position on arms exports, the directive on intra-Community transfers or the anti-torture regulation. However, there were efforts in the European Parliament to create a new mechanism at the EU level to inform and harmonize implementation of aspects of the common position.

The EU dual-use regulation

The EU dual-use regulation covers controls on the export, re-export, brokering and transit of dual-use goods, software and technology. The regulation is directly applicable law in EU member states but is implemented and enforced via their national control systems. In 2011 the EU began a process of review of the 2009 version of the regulation, which led to a legislative process for a 'recast' that concluded with a final compromise text in November 2020 after a 'trilogue' between the European Commission, the European Parliament and the Council of the EU.¹ The regulation was recast as Regulation (EU) 2021/821, which was adopted by the European Parliament in May 2021 and entered into force on 9 September 2021.²

Regulation (EU) 2021/821 introduces several new elements and modifications to the dual-use regulation. These include new EU general export

¹ Council of the European Union, 'New rules on trade of dual-use items agreed', Press release, 9 Nov. 2020.

² Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast), *Official Journal of the European Union*, L206, 11 June 2021.

authorisations (EUGEAs) for goods that employ cryptography and intra-company transfers of ‘technology’, expanded mechanisms of intra-governmental information sharing and public reporting, and a new catch-all control for non-listed cybersurveillance items. It also expanded the scope for member states to create national control list items and a new system of ‘transmissible’ controls that allow one member state to apply catch-all controls to exports of non-listed items for which another member state has created such national controls.³ For some of these issues the Commission and the European Parliament made proposals that were broader in scope than the changes eventually adopted but that were narrowed down during the negotiating phases due to opposition from EU member states. For the same reason, Regulation (EU) 2021/821 did not include other proposals made by the Commission and the European Parliament—including agreed standards on how to regulate the use of cloud computing to store and share controlled software and technology, new EUGEAs on low-value shipments and ‘other dual-use items’, and greater standardization in the amount of time states take to process licences and the penalties associated with non-compliance.

The views of the Commission and the European Parliament on the one hand and EU member states on the other regarding the merits of particular changes to the regulation largely reflected two underlying differences about its future development. The first concerned the extent to which aspects of the regulation’s implementation should be made subject to EU-level decision-making processes or remain under the control of member states. The second concerned the extent to which the range of items it controls should remain exclusively tied to the lists adopted in the multilateral export control regimes or be supplemented by items controlled on the basis of autonomous EU decisions. Many of the proposals that were put forward by the Commission and the European Parliament and opposed by member states would have shifted some decision-making powers towards the EU and away from member states or the regimes.⁴

Perhaps the most significant change introduced by Regulation (EU) 2021/821 is a new catch-all control for non-listed cybersurveillance items. Both the Commission and the European Parliament had initially proposed more extensive measures, including a unilateral control list for cyber-surveillance items and a catch-all control linked to human rights concerns. The new catch-all control that was agreed through the trilogue requires exporters to apply for a licence for the export of unlisted cybersurveillance

³ For a more detailed analysis of the changes introduced by Regulation (EU) 2021/821 see Bromley, M., Brockmann, K. and Maletta, G., ‘Developments in the European Union’s dual-use and arms trade controls’, *SIPRI Yearbook 2021*; and Bromley, M. and Brockmann, K., ‘Implementing the 2021 recast of the EU Dual-Use Regulation: Challenges and opportunities’, *EU Non-Proliferation and Disarmament Consortium, Non-Proliferation and Disarmament Paper no. 77* (Sep. 2021).

⁴ Bromley and Brockmann (note 3).

items if they have ‘been informed by the competent authority that [the items] may be intended, in their entirety or in part, for use in connection with internal repression and/or the commission of serious violations of human rights and international humanitarian law’.⁵ Exporters are also required to inform their national authorities if they are ‘aware according to [their] due diligence findings’ of any such risks.⁶ A key test for the dual-use regulation will be if and how the new catch-all is utilized, and which exports of non-listed cybersurveillance items are controlled and prevented. For example, members of the European Parliament have indicated that they would like to see the catch-all used to control exports of facial recognition systems and biometric systems, which are not currently captured by dual-use export controls.⁷ Regulation (EU) 2021/821 commits the Commission and the Council to producing guidelines to help exporters apply the catch-all. During 2021 the Commission and EU member states began work in the Surveillance Technology Expert Group (STEG)—a subsidiary body of the EU Dual-Use Coordination Group—on producing these guidelines, which they aim to publish by September 2022.⁸ Among other things, the guidelines will aim to clarify the regulation’s definition of cybersurveillance items and what is required of exporters under the ‘due diligence’ procedures referred to in the catch-all control.⁹

Another key focus for the recast was creating a more harmonized application of the dual-use regulation, including by achieving a more uniform interpretation of some of the concepts it references, such as the exemptions for ‘basic scientific research’ and information that is ‘in the public domain’. The need for more clarity and uniformity in the application of these exemptions has been highlighted in discussions about compliance with dual-use export controls by universities and research institutes.¹⁰ Regulation (EU) 2021/821 does not provide more specific definitions of the exemptions for ‘basic scientific research’ and information that is ‘in the public domain’ but notes that more detailed guidelines are needed.¹¹ In September 2021 the EU published a new set of guidelines, specifically targeted at research and academia, on how to set up and implement internal compliance programmes

⁵ Regulation (EU) 2021/821 (note 2), Article 5(1).

⁶ Regulation (EU) 2021/821 (note 2), Article 5(1).

⁷ See e.g. Gregorová, M., INTA Rapporteur, European Parliament, ‘The European Parliament’s expectations for more effective controls on cybersurveillance technologies’, Presentation at the 2020 Export Control Forum (virtual meeting), 11 Dec. 2020.

⁸ Farcas-Hutchinson, C., National Expert, DG TRADE, ‘Export control of cyber-surveillance items in the EU’, Presentation at the 2021 Export Control Forum, Brussels, 8 Dec. 2021.

⁹ Farcas-Hutchinson (note 8).

¹⁰ See e.g. Branislav, A. and de Bie, J. J. C., ‘From a practical view: The proposed dual-use regulation and export control challenges for research and academia’, Fraunhofer and TNO, Dec. 2017.

¹¹ Regulation (EU) 2021/821 (note 2), Preamble para. 13.

(ICPs).¹² The new guidelines outline frameworks for research organizations and researchers to use when establishing ICPs and for member states to use when developing outreach programmes targeted at research organizations and researchers.¹³ The guidelines seek to provide clarity on the scope of the decontrols on ‘basic scientific research’ by introducing two criteria to assist in determining whether they are relevant: the technology readiness level (TRL) and the prevalence of industry funding.¹⁴ TRLs were originally developed by the US National Aeronautics and Space Agency (NASA) to be ‘a type of measurement system used to assess the maturity level of a particular technology’.¹⁵ They have previously also been adopted within the framework of EU research funding mechanisms such as Horizon 2020.¹⁶

Another key focus of the recast was improving the ability of the EU and EU member states to respond to international and national security challenges posed by the development and proliferation of emerging technologies.¹⁷ The efforts undertaken by the USA to introduce national controls on a range of emerging technologies, and growing concerns over China’s foreign and domestic policies related to many areas of emerging technology, were key drivers for creating new mechanisms.¹⁸ The recast seeks to address these challenges by increasing the scope for member states to adopt national controls on unlisted items and creating a mechanism to make these controls transmissible so that they can be applied as a catch-all control by other EU member states.¹⁹

The new measures introduced by the dual-use regulation also connect with wider efforts by the EU and EU member states to keep pace with developments in emerging technologies and, where deemed necessary, to take steps to restrict certain transfers through dual-use export controls or implement other regulatory measures. Drawing from a series of technical workshops that took place in 2019–20, the EU published a series of fact sheets on relevant emerging technologies in September 2021.²⁰ The fact sheets list

¹² Commission Recommendation (EU) 2021/1700 of 15 Sep. 2021 on internal compliance programmes for controls of research involving dual-use items under Regulation (EU) 2021/821 of the European Parliament and of the Council setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items, *Official Journal of the European Union*, L338, 15 Sep. 2021.

¹³ Commission Recommendation (EU) 2021/1700 (note 12), p. 1.

¹⁴ Commission Recommendation (EU) 2021/1700 (note 12), p. 19.

¹⁵ Tzinis, I., ‘Technology readiness level’, NASA, 29 Oct. 2012 (updated 2 Apr. 2021).

¹⁶ European Commission, ‘Horizon 2020—Work programme 2016–2017: General annexes’, [n.d.], p. 29.

¹⁷ Bromley, Brockmann and Maletta (note 3); and Bromley and Brockmann (note 3).

¹⁸ US Department of Commerce, Bureau of Industry and Security, ‘Advance notice of proposed rulemaking: Review of controls for certain emerging technologies’, *Federal Register*, vol. 83, no. 223 (19 Nov. 2018); and Bromley, Brockmann and Maletta (note 3).

¹⁹ Bromley and Brockmann (note 3).

²⁰ See e.g. European Commission, ‘Emerging technologies: Developments in the context of dual-use export controls’, Fact sheet, Sep. 2021.

the industries developing and utilising each technology, their ‘export control relevant’ applications within the military and ‘public security agencies’, how they are currently captured by dual-use export controls, and the extent to which they are the subject of discussions within the export control regimes about creating new control list categories or modifying existing ones.²¹ In 2021 the EU also established the Emerging Technology Expert Group (ETEG) as a subsidiary body of the EU Dual-Use Coordination Group. The ETEG will draw on expertise of member states ‘to help develop an EU framework to address the risks associated with trade and technology transfers of such emerging technologies’.²²

The EU foreign direct investment screening regulation

The FDI screening regulation is focused on enabling the EU and EU member states to identify and respond to cases where FDI might allow foreign companies and governments to own and control critical infrastructure such as transport hubs, energy grids and telecommunications networks, or to gain access to knowledge and technology which may or may not be subject to export controls but which could benefit their defence and security capabilities. The regulation does not require EU member states that do not have a screening mechanism to put one in place; it only establishes basic requirements that should be common to any such mechanism. Nevertheless, the regulation obliges member states to share information about FDI cases that are being screened, while creating a mechanism for other EU member states to provide comments and for the Commission to issue non-binding opinions on certain cases.²³

The EU has not framed the FDI screening regulation as being focused on any particular foreign state. However, negotiation and adoption of the regulation took place against a background of heightened concern about Chinese investments.²⁴ While the levels of Chinese FDI in Europe have declined since 2016—particularly sharply during the Covid-19 pandemic—concerns about their origin and purpose have persisted. For example, in September 2021 the Italian authorities announced that they were charging six individuals in connection with the sale of a 75 per cent stake

²¹ European Commission (note 20).

²² European Commission, Directorate-General for Trade, ‘Commission’s actions to implement new EU Export Control Regulation’, Memo, 9 Sep. 2021.

²³ Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 Mar. 2019 establishing a framework for the screening of foreign direct investments into the Union, *Official Journal of the European Union*, L79 I, 21 Mar. 2019, Preamble para. 19.

²⁴ Hanemann, T. and Huotari, M., *EU–China FDI: Working Towards Reciprocity in Investment Relations*, Mercator Institute for China Studies (MERICS) Papers on China, Update no. 3 (MERICS: Berlin, May 2018); and Nienaber, M., ‘German minister ups rhetoric against takeovers ahead of China trip’, Reuters, 29 Oct. 2016.

in Alpi Aviation—a manufacturer of military drones—to a Hong Kong-based company in 2018.²⁵ The authorities alleged that the sale inflated the true value of the company, sought to mask the true actors behind the Hong Kong-based company—discovered to be two government-owned companies in China—and took place without the prior consent of the Italian authorities.²⁶

In November 2021 the Commission published the first annual report on the implementation of the FDI screening regulation.²⁷ The report was published together with the 2021 edition of the Commission’s annual report on the implementation of the dual-use regulation, emphasizing the extent to which the two instruments have a shared focus on regulating transfers of sensitive goods and technologies.²⁸ The report noted that more than 400 transactions had been notified by member states since the FDI screening regulation’s entry into force. Until 30 June 2021, the Commission had received 265 notifications for screening and issued an opinion in around 3 per cent of these cases.²⁹ Over 90 per cent of the cases submitted came from only five member states: Austria, France, Germany, Italy and Spain.³⁰ Among the countries of origin of investors in the notified FDI cases, the largest share came, in decreasing order, from the USA, the United Kingdom, China, Canada and the United Arab Emirates.³¹ The report also noted that as of 1 July 2021, 18 EU member states had FDI screening mechanisms in place, compared with 11 in 2017.³² The report identified six additional member states as having initiated consultative or legislative processes that are expected to lead to the introduction of such mechanisms.

Member states have welcomed the regulation and its cooperation mechanism. However, several member states also noted the need for clarity of key concepts; resource constraints; and implementation challenges, including ‘tight deadlines’ and the amount of requests for information related to multi-jurisdictional transfers.³³ Proposals for addressing these challenges included the production of guidelines on notification requirements ‘to sharpen the focus and avoid “overloading” the system’.³⁴

²⁵ Italian Finance Police, ‘Violazione alla legge sui materiali d’armamento—Denunciate 6 persone’ [Violation of the law on military goods—6 people reported], Press release, 6 Sep. 2021.

²⁶ Italian Finance Police (note 25).

²⁷ European Commission, ‘Trade and security: Commission highlights work to defend EU interests and values’, Press release, 23 Nov. 2021.

²⁸ European Commission, ‘First annual report on the screening of foreign direct investments into the Union’, Report to the European Parliament and the Council, COM(2021) 714, 23 Nov. 2021, p. 1.

²⁹ European Commission (note 27).

³⁰ European Commission (note 28), p. 11.

³¹ European Commission (note 28), p. 14.

³² European Commission (note 27).

³³ European Commission (note 28), pp. 15–17.

³⁴ European Commission (note 28), pp. 17–18.

European and United States cooperation on export controls

Cooperation between the EU and European states and the USA on export controls and trade policy more generally deepened in 2021. These efforts included a particular focus on export controls on emerging technologies and cybersurveillance items and FDI screening mechanisms. The USA has taken a range of steps in recent years to expand its controls in all these areas.³⁵ In contrast to the EU policy instruments that have been developed, those in the USA are very clearly motivated, in large part, by an attempt to tighten controls on transfers of dual-use items to China to both influence its domestic and foreign policy choices and limit its ability to gain access to technology that could benefit its defence industrial capabilities.

The EU–US Trade and Technology Council

In June 2021 the EU and the USA launched the EU–US Trade and Technology Council (TTC). The TTC will have ten working groups on a wide range of trade and technology topics, two of which are on the ‘misuse of technology threatening security and human rights’ and export controls.³⁶ The USA and the EU held the inaugural meeting of the TTC in September 2021 in Pittsburgh.³⁷ The outcome document outlines a number of steps that both parties commit to taking for improved coordination in identifying challenges and policy responses in the fields of emerging technology, FDI, export controls and artificial intelligence. The document also contains thinly veiled references to China and the need to focus efforts in all of these areas on controlling transfers to China, referring to shared concerns about the ‘civil-military fusion policies of certain actors’ which ‘undermine security interests, and challenge the objective assessment of risks by the competent authorities and the effective implementation of rules-based controls in line with internationally-agreed standards’.³⁸ On export controls, there is also an emphasis on working through the regimes and avoiding autonomous measures: ‘The USA and the European Union recognize the importance, where appropriate and feasible, of consultations prior to the introduction of controls outside the multilateral regimes.’³⁹

³⁵ See e.g. US Department of Commerce, Bureau of Industry and Security, ‘Information security controls: Cybersecurity items; delay of effective date’, *Federal Register*, vol. 87, no. 8 (12 Jan. 2022), pp. 1670–71; and Jackson, J. K., ‘The Committee on Foreign Investment in the United States (CFIUS)’, Congressional Research Service (CRS), 26 Feb. 2020.

³⁶ European Commission, ‘EU–US launch Trade and Technology Council to lead values-based global digital transformation’, Press release, 15 June 2021.

³⁷ White House, ‘US–EU Trade and Technology Council inaugural joint statement’, Briefing Room statement, 29 Sep. 2021.

³⁸ White House (note 37).

³⁹ White House (note 37).

Although the EU and the USA are taking steps to coordinate their export control policies, there is continued tension around the extraterritorial application of US export control and sanctions instruments. In 2021 the EU moved ahead with its attempts to update the blocking statute ‘to further deter and counteract the unlawful extra-territorial application of sanctions to EU operators by countries outside the EU’.⁴⁰ The original EU blocking statute was adopted in 1996 and seeks to protect EU operators against the extra-territorial application of the US sanctions on Cuba and Iran.⁴¹

Bilateral cooperation on controls on exports of cybersurveillance items

Separately, the USA is also seeking to build a broader coalition of states that would agree to apply common standards on exports of surveillance technologies. On the final day of the ‘summit for democracy’, which was held in December 2021 and organized by the USA, four states—Australia, Denmark, Norway and the USA—formally launched the Export Controls and Human Rights Initiative. In a joint statement the group of states noted that ‘authoritarian governments increasingly are using surveillance tools and other related technologies in connection with serious human rights abuses’.⁴² Substantively, the group has committed to developing ‘a voluntary written code of conduct intended to guide the application of human rights criteria to export licensing policy and practice’ and to engaging in ‘further coordination with other governments, as well as consult[ing] with industry and academia’.⁴³

Although the Export Controls and Human Rights Initiative pursues similar goals on exports of cybersurveillance items to those being pursued under the TTC, the USA did not channel this former initiative via the EU. This was reportedly due to the fact that EU-wide cooperation with the USA’s summit for democracy was blocked by Hungary, which had not been invited to participate.⁴⁴

The EU common position on arms exports

The EU common position on arms exports (EU common position) covers controls on the export, transit, trans-shipment and brokering of military equipment and technology. As an instrument of the EU’s common foreign and

⁴⁰ European Commission, ‘Blocking statute: Protecting EU operators, reinforcing European strategic autonomy’, [n.d.].

⁴¹ European Commission (note 40).

⁴² White House, ‘Joint statement on the Export Controls and Human Rights Initiative’, Briefing Room statement, 10 Dec. 2021.

⁴³ White House, ‘Export Controls and Human Rights Initiative launched at the Summit for Democracy’, Briefing Room fact sheet, 10 Dec. 2021.

⁴⁴ Vela, J. H., ‘Brussels Playbook: Putin–Biden talks—Belgium’s new COVID measures—NFI to the democracy summit’, *POLITICO Brussels Playbook*, 3 Dec. 2021.

Table 14.4. Submissions of information to the European Union annual report on arms exports, 2011–20

Annual report	Year covered	No. of states obliged to make submissions	No. of states making submissions	No. of states making full submissions ^a	Proportion of states making full submissions (%)
23rd	2020	27 ^b	27	23	85
22nd	2019	28	28	21	75
21st	2018	28	28	21	75
20th	2017	28	27 ^c	19	68
19th	2016	28	27 ^c	19	68
18th	2015	28	27 ^c	19	68
17th	2014	28	28	21	75
16th	2013	28	27 ^c	21	75
15th	2012	27 ^d	27	20	74
14th	2011	27	27	18	67

^a A 'full submission' is taken to be data on the financial value of both arms export licences issued and actual exports, broken down by both destination and European Union (EU) military list category.

^b The United Kingdom officially left the EU on 31 January 2020 and was not obliged to submit data for 2020.

^c Greece did not submit data to the 16th, 18th, 19th and 20th reports.

^d Croatia joined the EU in 2013 and was not obliged to submit data for 2012. It submitted data for the first time to the 16th report.

Sources: European External Action Service (EEAS), 'Arms Export Control—Arms Trade Treaty'; and Council of the European Union, 'Twenty-third annual report according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment', ST/12189/2021/INIT, Official Journal of the European Union, C515, 21 Dec. 2021.

security policy (CFSP), EU member states are legally obliged to implement its provisions, but the European Court of Justice (ECJ) and other EU bodies have no powers of sanction in cases of non-compliance. In 2021 the Council Working Party on Conventional Arms Exports (COARM) continued work on implementing the Council conclusions on arms exports that were agreed in 2019.⁴⁵ The 2019 conclusions were adopted following the last review of the EU common position and outlined a series of tasks for COARM to undertake to further improve transparency and convergence in arms export controls.⁴⁶ The tasks included harmonizing end-user certificates (EUCs) 'for the export of small arms and light weapons and their ammunition' at the EU level. In January 2021, EU member states agreed a Council decision establishing

⁴⁵ Council of the European Union, 'Council conclusions on the review of Council Common Position 2008/944/CFSP of 8 December 2008 on the control of arms exports', 12195/19, 16 Sep. 2019. COARM brings together EU member state officials working on arms export controls and is chaired by the European External Action Service (EEAS).

⁴⁶ See Bromley, M. and Maletta, G., 'Developments in the European Union's dual-use and arms trade controls', *SIPRI Yearbook 2020*, pp. 562–64.

common elements that should be included in such EUCs.⁴⁷ In 2021 COARM also started working on the development of a closed database for EU licensing officers, to provide them with access to reports and sources on the potential recipients of their arms exports.⁴⁸

September 2021 saw the adoption of the 23rd EU annual report on arms exports, which includes details on the financial value and number of member states' export licences, the value of their actual exports, and the aggregated data on licence denials in 2020. This publication date continues the trend in improved timeliness of the report's release and indicates that the reporting deadlines agreed after the 2019 review have had a positive impact.⁴⁹ The annual report shows that 85 per cent of EU member states submitted complete data for 2020 on licences granted and actual exports, broken down by the categories of the EU military list (table 14.4). However, not all EU member states currently provide disaggregated data on actual exports, which limits the comparability of the information included in the report.⁵⁰ Following the review of the common position, COARM has started a discussion on how to improve reporting on the value of actual exports, although this did not produce any tangible outcome in 2021.⁵¹

Draft proposal for an EU regulation on arms export controls

In October 2021 Hannah Neumann, a German member of the European Parliament and rapporteur for the parliament's report on arms exports, presented a proposal on behalf of the Greens/European Free Alliance (EFA) parliamentary group for an EU regulation that would establish an EU regime for arms export control.⁵² The aim of the proposed regulation is to reduce discrepancies among EU member states' policies on arms export control and prevent their weapons exports from being misused or diverted,

⁴⁷ Council Decision (CFSP) 2021/38 of 15 Jan. 2021 establishing a common approach on the elements of end-user certificates in the context of the export of small arms and light weapons and their ammunition, *Official Journal of the European Union*, L14, 18 Jan. 2021.

⁴⁸ European Union, Statement on treaty implementation at Arms Trade Treaty, Seventh Conference of States Parties, Geneva, 30 Aug.–3 Sep. 2021; and Council of the European Union, 'Twenty-third annual report according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment', ST/12189/2021/INIT, *Official Journal of the European Union*, C515, 21 Dec. 2021, p. 4.

⁴⁹ European External Action Service (EEAS), '23rd annual report on arms exports launched today (28/9): EU is a transparent and responsible trader in arms', 28 Sep. 2021; and Council of the European Union, 'User's guide to Council Common Position 2008/944/CFSP (as amended by Council decision (CFSP) 2019/1560) defining common rules governing the control of exports of military technology and equipment', 12189/19, 16 Sep. 2019, p. 154.

⁵⁰ Belgium, Cyprus, Germany, Greece and Latvia do not provide details on value of actual exports. Council of the European Union, ST/12189/2021/INIT (note 48), p. 8.

⁵¹ Council of the European Union, ST/12189/2021/INIT (note 48), p. 4.

⁵² German Green Party and European Free Alliance (Greens/EFA), 'How to prevent EU produced weapons from fuelling conflict', Webinar, YouTube, 12 Oct. 2021; and Neumann, H., Draft proposal for a 'Regulation of the European Parliament and of the Council setting up a Union regime for the control of arms exports', 12 Oct. 2021.

by strengthening the role of the EU in this area. The proposal assumes that greater involvement of EU institutions in arms export control is both necessary to guarantee a stricter application of export control standards, and legitimate because the EU's budget is increasingly being used to support the development of the European defence industrial base.⁵³

The proposal suggests several amendments to the language of the EU common position's export licensing criteria, adding explicit references to the risk of corruption and gender-based violence. One of the measures foreseen in the proposal is the creation of an EU Common Risk Assessment Body comprising independent experts nominated by the European Commission. Although EU member states would keep their prerogative on arms export control decisions, the body would be tasked with creating and periodically updating a list of countries where—based on an assessment of their internal situation, end-users and the items exported—there is a risk of the criteria being violated.⁵⁴ As an EU regulation, the proposed regime would also give the Commission the ability to oversee implementation and allow the ECJ to sanction cases of violations.⁵⁵

The German Green Party (of which Neumann is a representative) is part of the new German government that took office after the September 2021 elections. The coalition agreement that will guide the work of the new government includes specific provisions regarding arms export controls, including the adoption of a more restrictive arms export policy at the national level and cooperation for corresponding efforts at the EU level.⁵⁶ Despite Germany's likely support for the proposal, it is expected that the draft regulation in its current form will encounter opposition from other EU member states, particularly France, that prefer maintaining national control over export licensing decision-making.⁵⁷

Conclusions

The recast EU dual-use regulation and the FDI screening regulation have provided the EU and EU member states with a broader set of tools to control transfers and acquisitions of dual-use items and sensitive technologies and to coordinate their efforts in these areas. Despite a strong push from the Commission and the European Parliament during the review of the EU

⁵³ Neumann, H., 'A European arms export control: My draft regulation', 4 Nov. 2021; Greens/EFA, 'FAQs on EU arms exports', [n.d.]; and Neumann (note 52).

⁵⁴ Neumann (note 52), paras 22–25

⁵⁵ European Union, 'Types of legislation', [n.d.]; and Greens/EFA (note 53).

⁵⁶ Social Democratic Party of Germany, Free Democratic Party and Alliance 90/The Greens, 'Mehr Fortschritt wagen: Bünd. für Freiheit, Gerechtigkeit und Nachhaltigkeit' [Daring more progress: Alliance for freedom, justice and sustainability], Nov. 2011, p. 146.

⁵⁷ Sprenger, S., 'German proposal for an EU arms-export regime faces uphill battle', *Defence News*, 17 Dec. 2021.

dual-use regulation to devolve certain aspects of decision-making to the EU level, ultimate control over which items are subject to licensing requirements and which exports are approved remains in the hands of the member states. However, the proposal put forward in the European Parliament by the Greens/ EFA parliamentary group on embedding the provisions of the EU common position into an EU regulation indicates that debates about the extent to which issues concerning export controls are determined at the EU or member state level are likely to continue. Deeper EU–US cooperation and coordination on export controls and trade policy more generally appears to be high on the agenda for both the US Biden administration and the EU and its member states. However, substantive progress on these issues may prove challenging due to underlying differences both within the EU and between the EU and the USA about the eventual goal of these efforts.