

Position Paper

Priorities for EU-US Export Control Cooperation under the TTC

2022-January-14

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Introduction

Bitkom supports the creation of the EU-US Trade and Technology Council (TTC). Especially, we welcome the establishment of the Export Controls Working Group (ECWG) to pursue transatlantic alignment and coordinated approaches to export controls.

With reference to the TTC Principals' statement of 29 September 2021 on enhancing export control cooperation, we welcome that the EU and the US agreed to ensure that the application of export controls is equitable for both EU and US exporters. Also, we highly appreciate the commitment to working closely in partnership with the private sector and public R&D institutions in that regard as well as the steps that have already been taken (e.g. the joint virtual outreach for stakeholders on 27 October 2021).

Bitkom understands the TTC as a forum for transatlantic dialogue to identify common challenges that require joint action leading to mutually beneficial solutions. As such, both parties can benefit from industry expertise: Digital companies – operating at the nexus of trade and technology in both markets – have abundant experience in dealing with diverging regulations as well as export control practices. Bitkom and its members are ready to participate as active partners in this work to ensure more convergent, efficient and effective export controls.

In response to the consultation by the Directorate General for Trade of the European Commission (DG TRADE) we are looking to inform the work of the ECWG and draw the attention to the following areas and priorities for EU-US export control cooperation:

1 Wassenaar First

Bitkom is particularly supportive of the affirmation by the Inaugural Joint Statement that multilateral controls are the most successful approach for protecting international security and supporting a level-playing field. In a world of deeply integrated global supply chains, export controls need to be coordinated internationally to be effective. Thus, the stated goal of achieving greater convergence in approaches to exports con-

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controls should not only be viewed as an aim between the EU and the US but within the broader multilateral framework. Further **transatlantic alignment cannot replace multilateral solutions in export controls** – such as the Wassenaar Arrangement (WA) – but rather seek to strengthen their uniform implementation.

Also, technical consultations between the two parties should allow to facilitate discussions and adoption of new controls within the multilateral regimes. This will create a basis for a coordinated approach to an ever-evolving environment and ensure a strong basis to **multilateralize any new controls** at the level of the Wassenaar Arrangement.

2 Alignment on Wassenaar Control Lists and Across Members

The EU and US currently adopt changes in WA control lists on different timelines. This lack of synchronicity significantly increases the compliance burden for transatlantic businesses, particularly in cases where exporters need to balance US re-export controls for US-origin technologies and EU export controls for indigenous technologies and commodities. Thus, the US and the EU should examine approaches to **minimize gaps in WA control list adoption** and interpretation.

Also, to facilitate lawful exports and reduce administrative frictions on transatlantic businesses, both parties should seek to achieve a **coherent application of export control measures to WA participating states** beyond the EU and the US.

3 Clear Objectives and Scope of Application

Both parties should reach a **mutual understanding about the relevant security objectives underlying export control** measures. Said measures shall be oriented to the security interests and foreign policy objectives of the respective country or group of countries. In order not to harm the legitimacy of non-proliferation regimes, export controls need to be transparent with clear legal concepts and security objectives.

In addition, both parties should reach and express a mutual understanding that national export control regulation should **not have an extraterritorial reach** and should not be applied to non-national economic operators outside the respective own territory.

4 Coordination on Emerging Technologies

Both sides announced their intention “to cooperate to effectively address the misuse of technology”. Dual-use items and Emerging Technologies (EMT) have been at the center of this debate in the recent past. Bitkom encourages the EU and the US to intensify the dia-

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logue on what types of technologies and their possible applications are to be controlled as a basis for further developments within the WA.

In some cases, discussions on export controls for EMT target technologies that are currently still under development and thus feature a diverse array of potential end-uses. Hence, **the inclusion of EMT in export control regimes places high demands on the legislator to identify sensitive use-cases** of neutral technologies that require export controls.

The TTC can serve as a forum for the EU and the US to jointly align on criteria on what types of technologies and their possible applications would require controls. Bitkom recommends that the **WA remains the primary method for any new controls** promulgated by both parties.

5 Certainty in Export Authorization Requirements

Requirements that place the onus on businesses to investigate and assess subjective conditions in export markets generate significant compliance burdens, regulatory unpredictability, and the potential for inconsistent application of rules. Thus, the EU and US should ensure clear and objective authorization requirements for goods and technologies subject to export controls. List-based approaches that identify specific items subject to controls enable easier compliance and thus help facilitate legitimate trade.

Bitkom represents more than 2,700 companies of the digital economy, including 2,000 direct members. Through IT- and communication services alone, our members generate a domestic annual turnover of 190 billion Euros, including 50 billion Euros in exports. The members of Bitkom employ more than 2 million people in Germany. Among these members are 1,000 small and medium-sized businesses, over 500 startups and almost all global players. They offer a wide range of software technologies, IT-services, and telecommunications or internet services, produce hardware and consumer electronics, operate in the digital media sector or are in other ways affiliated with the digital economy. 80 percent of the members' headquarters are located in Germany with an additional 8 percent both in the EU and the USA, as well as 4 percent in other regions of the world. Bitkom promotes the digital transformation of the German economy, as well as of German society at large, enabling citizens to benefit from digitalisation. A strong European digital policy and a fully integrated digital single market are at the heart of Bitkom's concerns, as well as establishing Germany as a key driver of digital change in Europe and globally.