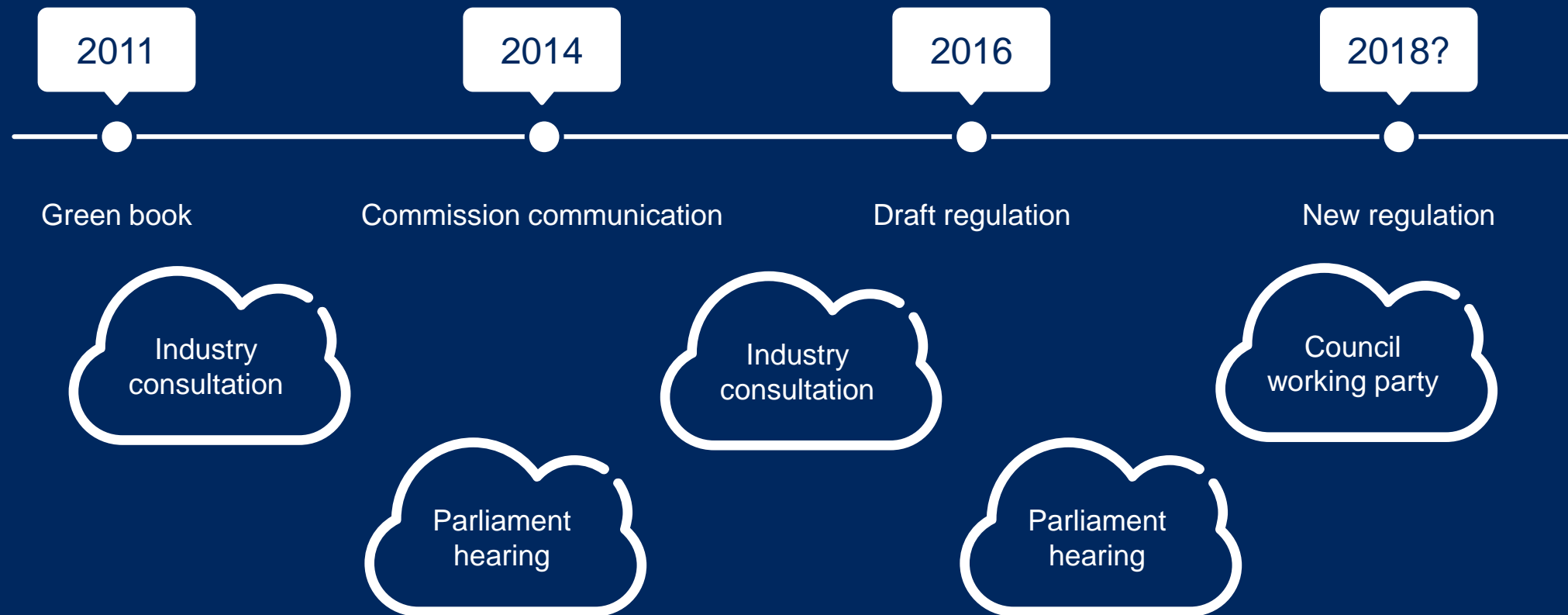


THE FUTURE OF EXPORT CONTROLS IN THE EU

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AN ONGOING PROCESS SINCE 2011



CORNER STONES



Human rights

- › New definition for dual-use; cyber surveillance and human rights
- › Expanded catch-all mechanism
- › EU autonomous list
- › New licensing criteria

Level Playing Field

- › New definition of export for intangible transfers
- › Global licenses subject to implementation of ICP
- › Guidelines
- › Increased use of the Coordination group

Trade liberalization

- › New EUGEA for encryption
- › New EUGEA for intra-company group transfers

Reporting

- › Global licenses subject to reporting of items, quantity, value, consignees, end-use and end-users.
- › Same reporting requirement for the new EUGEA for encryption

EXPANDED DEFINITION OF DUAL-USE

- › Items, including software and technology, which can be used for both civil and military purposes, and shall include:
- › (a) items which can be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery, including all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices;
- › ***(b) cyber-surveillance technology which can be used for the commission of serious violations of human rights or international humanitarian law, or can pose a threat to international security or the essential security interests of the Union and its Member States.***

EXPANDED DEFINITION OF DUAL-USE

- › Cyber-surveillance technology is defined as:
- › Items *specially **designed to enable the covert*** intrusion into information and telecommunication systems with a view to monitoring, extracting, collecting and analysing data and/or incapacitating or damaging the targeted system. This includes items related to the following technology and equipment:
 - › (a) mobile telecommunication interception equipment;
 - › (b) intrusion software;
 - › (c) monitoring centres;
 - › (d) lawful interception systems and data retention systems;
 - › (e) digital forensics.

INTRODUCTION OF (UNILATERAL) CATEGORY 10 TO ANNEX I

- › **10A001 Surveillance systems, equipment and components for ICT (Information and Communication Technology) for public networks** where the destination lies outside the customs territory of the European Union and outside of Part 2 of Section A of Annex II to this Regulation, as follows:
 - › **a. Monitoring Centres (Law Enforcement Monitoring Facilities) for Lawful Interception Systems** (LI, for example according to ETSI ES 201 158, ETSI ES 201 671 or equivalent specifications or standards) and specially designed components therefor, **b. Retention systems or devices for event data** (Intercept Related Information IRI, for example, according to ETSI TS 102 656 or equivalent specifications or standards) and specially designed components therefor.'

EXPANDED CATCH-ALL

- › For use by persons complicit in or responsible for directing or implementation grave violations of human rights or international humanitarian law in situation of armed conflict or internal repression in the country of final destination, and where there is evidence of the use of this or similar technology or equipment for directing or implementing such grave violations by the proposed end-user;
- › For use in connection with acts of terrorism.

INCREASED RESPONSIBILITY FOR EXPORTERS

- › “If an exporter under his obligation to exercise due diligence is aware that dual-use items which he proposes to export, not listed in Annex 1 or 1A, are intended, in their entirety or in part, for any of the uses referred to in paragraphs 1 he must notify the authorities”
- › European Parliament wants to go even further to “has grounds for suspicion”
- › Applicable also for brokering and technical assistance.

NEW LICENSING CRITERIA FOR THE COMPETENT AUTHORITIES

- › When reviewing license applications or deciding whether or not to prohibit a particular transit shipment through the EU, account must also be taken of:
- › ● Respect for **human rights** in the country of final destination as well as respect by that country of **international humanitarian law**
- › ● **Internal situation** in the country of final destination – competent authorities will not authorize exports that would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination
- › ● Preservation of **regional peace, security and stability**

POLARIZED STAKEHOLDERS



Level playing field



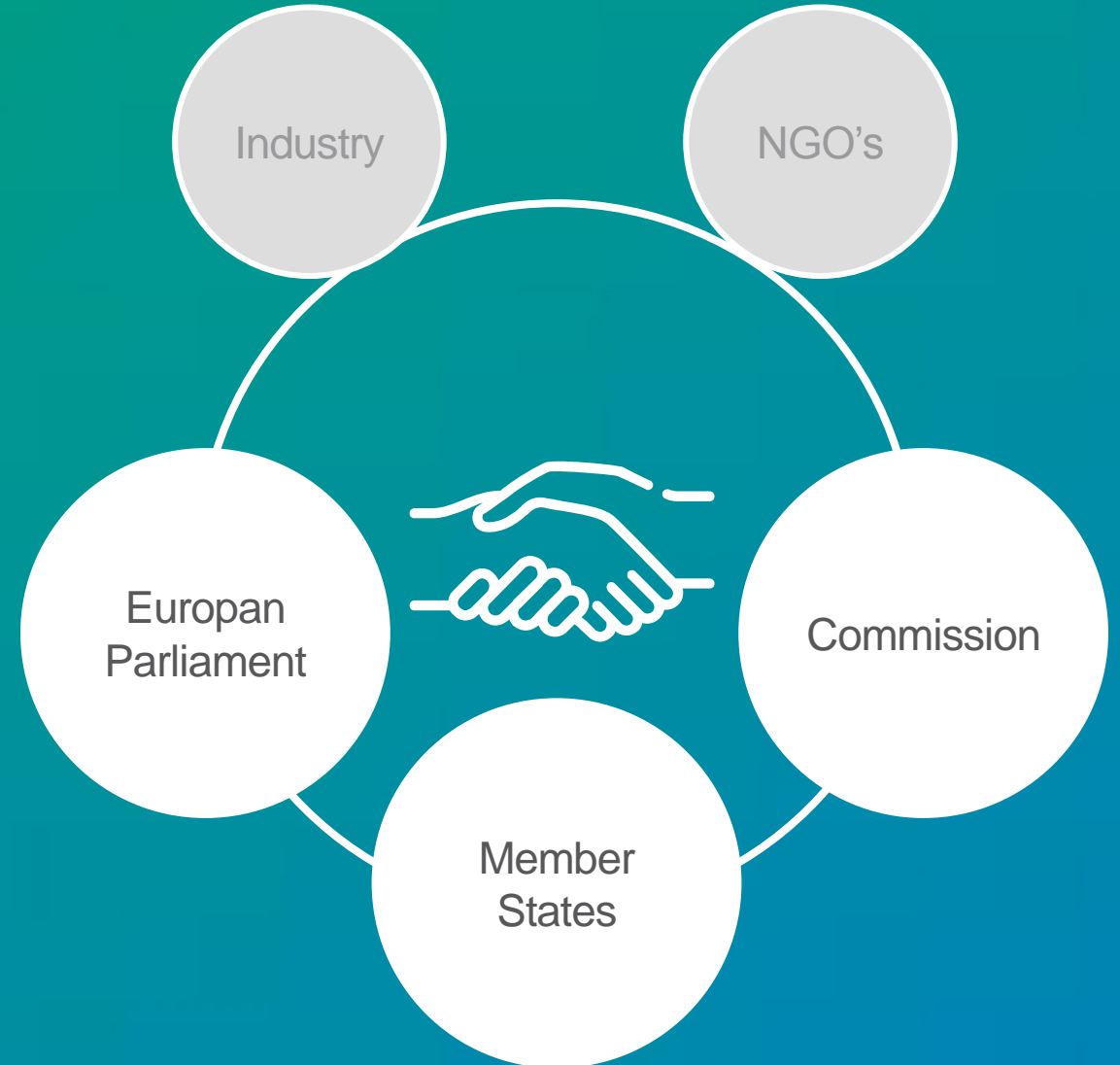
National security



Human rights



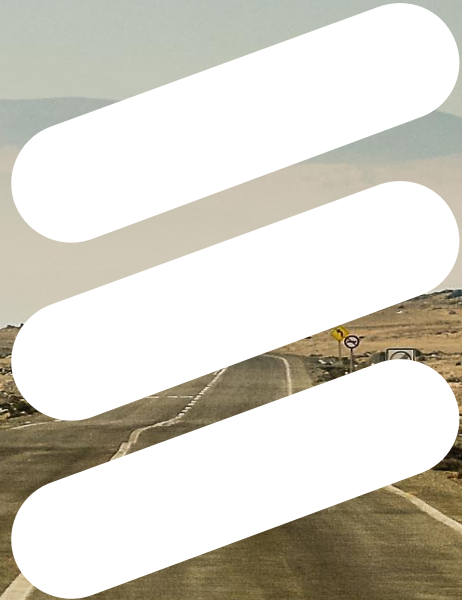
Trade liberalization



CONCLUSION



- 1 New vague concepts – human rights, cyber surveillance, due diligence
- 2 Expanded definition of dual-use, including EU autonomous control list
- 3 Expanded catch-all – incl. brokering and services
- 4 New license criteria?
- 5 New EUGEAs – tech transfers and encryption
- 6 Reporting – global licenses and EUGEAs



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