**SCRIPT: updating the control lists**

1. **Basics of arms control (slides 3 & 4):**

Controlling its arms, war material and other strategic or sensitive goods is an act of national sovereignty.

A State can legitimately acquire conventional arms in order to exercise its “*natural right of legitimate defence*”.

It is the responsibility of each State that is a signatory to the ATT to:

* Respect their international obligations
* Regulate the international trade of conventional arms
* Prevent the diversion of conventional arms
* Apply a national control regime

The general principle of the law on the prohibition of the unauthorised export of arms means that all flows of arms, war material and other strategic or sensitive goods are subject to the control of each sovereign State.

The aim of defining a nomenclature and classification system for strategic and sensitive goods is to determine the legal regime applicable under national law.

1. **Multilateral export control regimes (slides 5 to 7):**

The multilateral export control regimes (MECR) applicable to strategic and sensitive goods are informal, voluntary and non-legally binding intergovernmental agreements that provide a means for establishing the following, by consensus at regular meetings:

* **Lists of controlled goods**, in line with their sensitivity and various agreed criteria. These lists are reviewed annually in line with technological developments, international security challenges and the command of the technology by member and non-member countries.
* **Common guidelines**, notably for the evaluation of licence requests (e.g. good practices, notification of refused licences).

These regimes allow “*participating States*” to implement national controls, apply guidelines within national regulations and update them over time, as they are committed to them by participating in these regimes.

These regimes also have an influence on non-member States, given that a considerable number of non-participating countries apply all or part or draw heavily on these control lists for their national regulations.

**The 4 main control regimes are as follows:**

**The nuclear supplier group (NSG)**: contributes to the non-proliferation of nuclear weapons. Founded in 1974, it currently comprises 48 participating States.

**The missile technology control regime (MTCR):** contributes to the non-proliferation of unmanned delivery systems capable of delivering weapons of mass destruction (missiles and drones). Founded in 1987, it currently comprises 35 participating States.

**The Australia Group**: contributes to the non-proliferation of biological, chemical and toxin weapons. Created in 1985, it currently comprises 42 participating States.

**The Wassenaar arrangement**: contributes to the non-proliferation of conventional arms Created in 1995, it currently comprises 42 participating States.

Relationship between treaties and control regimes:

The informal work conducted under the regimes is compliant with and supplements the various legally binding international instruments (treaties and conventions) in the field of the non-proliferation of weapons of mass destruction and conventional arms.

The table on slide 6 outlines the connections between the non-binding regimes and the binding international texts.

Which States for which control regimes?

The diagram on slide 7 shows which States participate in which control regimes.

1. **Wassenaar Arrangement (slides 8 to 12)**

**Mission**: Multilateral forum on the control of conventional arms and associated sensitive dual-use goods and technologies

**History**: founded in the Dutch town of the same name in 1994. In operation since 1996.

**42 participating countries** (including USA, Russia, Europe, Canada, Japan, South Korea)

**Governance**: Permanent Secretariat (Vienna) - 2 groups (WA-EG, WA-GWG) - 1 plenary assembly WA-PLM) that makes decisions based on proposals from the various groups. Annual meeting in December. Rotating presidency

**How:** by defining the goods, software and technologies that must be subject to export controls:

* **War material and related items (conventional arms)** called the “*Munitions List*”: 22 categories
* **Dual-use goods** (diversion for the purpose of conventional arms) called the “*Dual-use List*”: 9 categories

Annual modification of these lists based on a unanimous vote from the countries present (no reserves)

Around 100 proposals/year: additions, clarifications, deletions, editorial changes

Technical discussions within the Expert Group:

* Two sessions with a vote: April and September
* One session without a vote: June

The list arising from the Expert Group (WA-EG) debates is taken up again by the policy group (WA-GWG) and then validated during the December plenary meeting (PLM), which validates any changes

**EG work scope:**

Types of proposals:

* **Proposed binding changes to the lists (ML/DUG)**: submitted by the participating States at the start of the year (editorial changes, clarifications, additions, withdrawals, modification of criteria, modification of thresholds, entry changes, etc.). Updates when needed. Withdrawal possible at any time
* **Non-paper**: informal exchanges (e.g. classification practices of other participating countries) held at any point in the year

**Set-up of exchanges:**

* Working language: English only
* Format:
* Written:
	+ In compliance with the guidelines on “confidentiality of exchanges” and “formulation of propositions to the WA” guidelines (chapter/sub-entry structure, different types of notes, global/local definitions, reference to standards, units of measure, etc.)
	+ Each proposal must include: reference, current text, proposed change, context, ease of control, link with other regimes, etc.
	+ Written questions/answers, minutes of TWG ... Published on the WA website
* Oral:
	+ Meeting debates (TWG) - positions expressed in EG plenary meetings
	+ Informal votes (June) - final binding vote (September)

**Example ML changes during 2016-2019**

* **ML1d**: clarification of accessories designed for arms mentioned in 3 other sub-categories of ML1. For optical weapon sights, replacement of magnification criteria with electronic image processing criteria (more suitable for military equipment)
* **ML5, ML6 and ML7**: entries reformulated to replace certain terms considered too subjective, such as “adapted for war use”
* **ML9.b**: deletion of performance criteria to broaden the control to all diesel engines specially designed for submarines
* **ML9h**: new entry and clarification for maintenance equipment dedicated to nuclear marine propulsion. Modification of entry ML17g to target other nuclear energy generators.
* **ML11b**: replacement of the term “GNSS” by “NSS” to broaden the control to all international satellite navigation systems
* **ML21b5**: new entry to control software specially designed or modified to lead offensive cyber operations
1. **Transposition into national law (slides 13 & 14)**

The process of transposing the lists into national law generally involves several stages: not only must they be translated into the national language, but internal procedures required to make a text legally binding must also be carried out.

Europe is an interesting example, as the texts have to be translated into 24 languages.

Depending the control lists, some are concatenated into a directly applicable single regulation (this is the case for dual-use goods from 4 control regimes), whereas others are subject to various intermediary transpositions before the final legally binding national text is formalised (e.g. for war material).

Example of transposition of the ML into French law:

* **Stage 1**: proposals and discussions of proposed changes to the “Munitions List” within the Wassenaar Arrangement (year N);
* **Stage 2**: adoption (vote by consensus) of the updated list by the Wassenaar Arrangement plenary assembly (end of year N);
* **Stage 3**: Updating of the European Union common military list for equipment covered by Common Position 2008/944/CFSP (1st half of year N+1). This decision is then adopted by the Council. At this stage, this list translated into French (and 23 other languages) which takes the form of a CFSP decision has no binding value for the member States;
* **Stage 4**: Adoption of the directive that contains the common military list updated by the Commission in its annexes, modifying directive 2009/43/EC of the European Parliament and the Council regarding the list of defence-related products (2nd half of year N+1). This directive translated into 24 languages subjects the member states to an obligation of transposition. For this purpose, it stipulates a deadline for the transposition into national law;
* **Stage 5**: The Decree of 27 June 2012 (the binding national text) is updated (1st quarter of year N+2). This constitutes the act of transposing the directive. This can also be an opportunity to make any changes relating to the 2nd part of the annex (other related material - ORM) of the decree (list only applicable at national level). If this is not the case, the national list of war material and related material in force shall include the 1st part updated by the most recent decree in force and the 2nd part as previously modified.