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DIGITALEUROPE Comments on Draft Export Control Law of the PRC

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.



Background

China is a key dynamic driver of the global economy and important partner for the European industry. DIGITALEUROPE recognizes the importance of the Sino-European trade and bilateral relation. On a typical day, the value of trade between China and the EU exceeds 1 Billion euros. Not only China is the EU's second biggest trading partner, but the EU is also China's biggest trading partner. Our members appreciate the high potential of the Chinese market, particularly as China increasingly promotes the integration of ICT and related technologies through relevant government policies. It is hence in our joint strategic interest to create a strong global ecosystem - based on global standards and embedded in multilateral trade and regulatory frameworks.

However, some concerns remain about measures potentially curtailing trade relations and hampering the full development of Sino-European trade relations. In particular, recent data highlighted China's extreme restrictiveness in digital trade. Such an approach damages the principles of fair competition and triggers a zero-sum dynamic which may bring about further protectionist outcomes.



Key Messages

DIGITALEUROPE welcomes the Chinese government's consultations on the Draft Export Control Law (Draft Law) and wishes it may keep momentum on the dialogue with industry and academia in developing win-win legal and policy measures.

DIGITALEUROPE stresses the need to further clarify the framework on Export Control of dual-used goods. In increasingly interdependent global supply chains – in particular in the ICT sector - aligning with existing multilateral regimes regarding controlled items would enhance legal certainty and reduce costs for both Chinese and European companies.

DIGITALEUROPE believes that the new Draft Law's alignment with international rules and norms is a welcome development. We are confident that such a convergence may contribute to a more predictable global approach. Increased clarity and predictability may in return boost the efficiency of doing business in China, thus helping to tensions with its trading partners that may arise over concerns of discriminatory treatment.

DIGITALEUROPE welcomes and supports China's commitment to regulatory transparency and pledges to engage further in the constructive dialogue started by the Chinese Government with these consultations.

We provide general comments on the Draft Law addressing the most contentious issues for our members and highlighting the room for further possible cooperation on several provisions of the Draft Law.



Recommendations

- I. **Appropriate scope of controls:** the Draft Law does not set down a specific list of controlled items. The scope of items subject to control remains broad, in particular in its reference to 'dual-use' items. It does not address classification or how sensitivity levels of items are determined. DIGITALEUROPE asks for the scope of control as stated in art. 2 to be clarified. We encourage China to align with internationally accepted practices and standards. In doing so, we urge the focus of the proposed export control system to be on those items significant to national security interests and on fulfilling international obligations, as specified by art. 1. Therefore, the proposed export control system should not include commercial mass market items that by volume or distribution are not susceptible to control.
- II. **Definition of key terms and non-ambiguous language:** several of the terms introduced in the Draft Law have not been defined, leaving room for diverging interpretations. This may in turn result in both unintentional violations and

increased legal burdens for exporters. In particular, further clarity is advised on art. 2. DIGITALEUROPE suggests developing detailed definitions on jurisdiction, deemed export, “dual-use”, and foreign natural person/legal entity. We emphasize how the so-called ‘deemed export’ requirement might affect multinational corporations’ R&D activities in China while also affecting R&D sector of Chinese companies. We also note the reference to “services” in article 2 and would like to both highlight the importance of alignment with international export control standards, as will be further elaborated in our third recommendation, and the need for a clear definition if “services” are to be included under Chinese export controls. Moreover, on the assessment measures as of art. 8 “over the destination countries or region of the export of controlled items”, it is suggested to clarify the base and criteria for assessing country- or region- specific risks, with clearly defined level and corresponding control measures and the practice and standard of sanctioning. All the definitions should be harmonized with international standards. Unique approaches and methods would be very difficult for companies to comply with and implement.

- III. **Alignment with the Multilateral Control Regime:** DIGITALEUROPE welcomes the newly introduced language committing China’s alignment with international rules. The alignment with international rules would help deliver a more predictable and standardized global approach thus contributing to both China’s national security and enhancing international security. We encourage the Chinese government to utilize internationally accepted practices, standards and metrics when creating technical thresholds. This will significantly contribute to creating a global level-playing field, reducing the administrative burden of multiple concurrent regulation. For instance, we stress the relevance of promoting weighted teraflops (WT) thresholds consistent with other country controls. In particular, consistency with international controls is advisable for categories 4 and 5 and in separating the differences between software and technology, and hardware (15 WT for software and technology, 28 WT for hardware).

- IV. **Certification, licensing Procedure and implementation:** DIGITALEUROPE advocates for *bulk and general licensing mechanisms* aligned with international export regulations. A flexible licensing system minimizes uncertainty in control status that results in unnecessary regulatory burdens for companies. In particular, we recommend that China consider license exceptions that would authorize exporters to export dual-use items, services and technology to a

specific destination on the basis of transparent and clear-cut criteria and for intercompany transfers for goods and technology. Moreover, DIGITALEUROPE emphasizes that certification of end users represents one of the most burdensome requirements of dual-use items export control. Therefore, we suggest art. 17 to opt for an approach that requires it only for specific transaction that are strategic in nature as this would be more effective in practice.

V. Internal Control Program: DIGITALEUROPE approves and welcomes that the Draft Law is seeking to utilize exporters' Internal Control Programmes (ICP). We recommend that authorities develop tier-based licensing schemes which could be based on the exporter's business nature, volume, compliance history and/or fulfillment of stipulated ICP elements. License exceptions should also be introduced to minimize licensing applications for less sensitive dual-use items especially for high-volume exporters or eliminate the need for individual transaction license. This would align with many countries in Asia and elsewhere and allow authorities to better focus on exporters with a higher likelihood for violations. We also respectively seek further information on the details of the desired characteristics of an "effective" ICP.

VI. Enforcement – Disclosures & Penalties: DIGITALEUROPE recommends that the Draft Law include strong protections for confidential business information provided to the Government for licensing, classifications and related activities.

Moreover, the Draft Law should set out penalties adequate and appropriate to different types of infractions: violations due to unintentional mistakes of the applicable regulation should receive a fine commensurate to the gravity of the violation, with more serious sanctions reserved for repeated and intentional violations. The relevant agencies should also publicly release information on export violations in order to raise awareness for responsible exporters that could unintentionally interact with parties that consistently violate export control regulations.

Voluntary self-disclosure should be encouraged with available procedures and reduced penalties and no unreasonable requests for technological disclosure or write up should be demanded, in conformity with the provisions of other global export regulations. DIGITALEUROPE also recommends that the export control law, and regulations issued pursuant to it, include protections for Confidential business information provided to the authorities for licensing.

- VII. Transition/Grace Period:** A lengthy, transparent and orderly transition with clear rules is essential. The development and implementation of the export control system envisaged in the Draft Law will be a far-reaching exercise deeply affecting both Chinese economy and the global information technology value chain. We recommend Chinese authorities to work in close cooperation with domestic and global stakeholders to phase in export restrictions.

The Chinese authorities should ensure that industry and all the relevant stakeholders have received adequate notice of all legal novelties and requirements before implementing the Law. Ideally, this would result in a phased implementation of control regimes for different technologies and items. A phased approach would allow both the Government and industry to make the most of best practices when implementing controls.

DIGITALEUROPE urges a grace period of no less than 9 months before implementing new rules. We also recommend the authorities to publish a timeline for implementation of the proposed export control systems and the opportunities for further engagement between industry and Government throughout the process.

- VIII. Advisory Committee:** DIGITALEUROPE recommends Chinese state export control authorities to engage industry experts through a technical Advisory Committee. The work of the Committee would bring together information to make decisions on export controls and to develop and refine the controlled items list.

The Advisory Committee should reflect the stakeholders involved in the Chinese market and be open to participation by all companies. The opportunity of benefitting from the inputs of academics and independent experts should be welcomed. The Advisory Committee will be instrumental in improving the Draft Law's effectiveness and will bring benefits for both Government and industry. DIGITALEUROPE emphasizes the role of the Advisory Committee in providing feedback to enable the export control law to keep pace with the progress of technological innovation ensuring that only truly sensitive items and technology are subject to control.

About DIGITALEUROPE

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Belarus: INFOPARK

Belgium: AGORIA

Croatia: Croatian

Chamber of Economy

Cyprus: CITEA

Denmark: DI Digital, IT

BRANCHEN, Dansk Erhverv

Estonia: ITL

Finland: TIF

France: AFNUM, Syntec

Numérique, Tech in France

Germany: BITKOM, ZVEI

Greece: SEPE

Hungary: IVSZ

Ireland: Technology Ireland

Italy: Anitec-Assinform

Lithuania: INFOBALT

Luxembourg: APSI

Netherlands: Nederland ICT,

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Norway: Abelia

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Portugal: AGEFE

Romania: ANIS, APDETIC

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