Dual-use items and technology: Community regime for the control of exports, transfer, brokering and transit

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The Committee on International Trade adopted the report by Jörg LEICHTFRIED (S&D, AT) on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology.

It recommended that the European Parliament's position at first reading under the ordinary legislative procedure should be to amend the Commission proposal.

The main amendments are as follows:

Title and Regulation (EC) No 428/2009: the title is changed to Regulation of the European Parliament and of the Council amending Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual use items (recast). The Commission proposal had stated that this was a Council Regulation amending Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology.

Members consider that this amendment clarifies that the institutions agree to amend the latest version of the Regulation. They note that on 17 December 2008, the Commission submitted a proposal to amend Regulation No. 1334/2000 to the Council. Regulation No. 1334/2000 was replaced by a new Dual-Use-Regulation (Recast) No 428/2009 and entered into force on 27 August 2009. The report also recalls that **Regulation (EC) No 1334/2000 was repealed** with effect from 27 August 2009. The relevant provisions of Regulation (EC) No 1334/2000 continue to apply only for export authorisation applications made before 27 August 2009.

Objective: an amended recital states that it is desirable to achieve uniform and consistent application of controls throughout the Union in order to avoid unfair competition among Union exporters, and **harmonise the scope of general export authorisations** and the conditions of their use. The latter objective was not part of the original proposal.

Transparency: a new recital notes that in the interest of transparency, democracy and efficient implementation of Regulation (EC) No 428/2009, this Regulation should provide for a mechanism that gives stakeholders such as human rights and peace monitoring organisations and trade unions a say in the decision making process that leads to the updating of the countries of destination as well as the updating of goods identified as dual use items.

Notifications: Members state that all notifications required under the terms of the Regulation will be made via secure electronic means including a secure system that shall be set up. A secure and encrypted system for the exchange of information among Member States and whenever appropriate the Commission shall be set up by the Commission, in consultation with the Dual-Use Coordination Group. The European Parliament shall be informed about the system's budget, development, provisional and final set-up and functioning, and network costs.

This amendment seeks to oblige the Commission to set up a secure system for the collection, transmission, and storage of notifications. The system would be destined to have access on-line to a database containing e.g. the denials of export authorisations.

Establishment of Dual-Use Coordination Group: a Dual-Use Coordination Group chaired by a representative of the Commission shall be set up. Each Member State shall appoint a representative to this Group. It shall examine any question concerning the application of this Regulation which may be raised either by the chair or by a representative of a Member State. The Chair of the Dual-Use Coordination Group or the Coordination Group shall, whenever it considers it to be necessary, consult exporters, brokers and other relevant stakeholders concerned by this Regulation. The Chair of the Dual-Use Coordination Group shall submit an annual report to the European Parliament on its activities, questions examined and consultations as well as a list of exporters, brokers and stakeholders that have been consulted.

Review and reporting: every three years the Commission shall review the implementation of this Regulation and present a comprehensive implementation and impact assessment report to the European Parliament and the Council on its application, which may include proposals for its amendment. Member States shall provide to the Commission all appropriate information for the preparation of the report. Special sections of the report shall deal with: a) the Dual-Use Coordination Group and cover its activities, questions examined and consultations as well as a list of exporters, brokers and stakeholders that have been consulted; (b) the implementation of provisions on the secure and encrypted system for the exchange of information among Member States and the Commission; (c) the implementation of the provision which provides for Annex I to be updated in conformity with the relevant obligations and commitments, and any modification thereof, that Member States have accepted as members of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties, including the Australia Group, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers Group (NSG), the Wassenaar Arrangement and the Chemical Weapons Convention (CWC); (d) the implementation of provisions which provides for Annex IV, as a subset of Annex I, to be updated with regard to Article 36 of the Treaty on the Functioning of the European Union, namely the public policy and public security interests of the Member States.

A further special section of the report shall provide **comprehensive evidence on penalties, including criminal penalties for serious infringements of the provisions of the Regulation**, such as intentional exports intended for use in a programme for the development or manufacture of chemical, biological, nuclear weapons or of missiles capable of their delivery without the authorisation required under this Regulation, or the falsification or omission of information with a view to obtaining an authorisation that would otherwise have been denied.

The European Parliament or the Council may invite the Commission to an ad hoc meeting of the competent committee of Parliament or of the Council to present and explain any issues related to the application of this Regulation.

International cooperation: the Commission may negotiate with third countries agreements providing for the mutual recognition of export controls of dual-use items covered by the Regulation, in particular to eliminate authorisation requirements for re-exports within the territory of the Union. When appropriate and when projects financed by the Union are at stake, the Commission can make proposals, in the relevant legislative frameworks of the Union or in the arrangements with third countries, so that an ad hoc committee involving all competent authorities of the Member States can be set up and be entitled to decide on the granting of the necessary export authorisations to ensure the proper functioning of those projects involving dual-use items or technologies.

This amendment seeks to establish a legal basis on international cooperation to contribute to solving current situations such as e.g. where exporters in third countries and in the EU are obliged to apply controls to transfers of dual-use items in the single market (when third countries' laws impose re-export rules within the single market of dual-use items imported), to allow for mutual recognition of export authorisations and therefore to greatly facilitate joint industrial projects or research projects in particular with third countries members of international export control regimes or listed in the current GEA, and to allow for the adoption of EU-wide specific export control rules that would be applicable to the technologies developed in the EU in the context of EU-financed international programmes involving third countries and would also cover access through intangible means to those technologies.

Amendments to the Annexes:these amendments seek to:

- contribute to the formulation of the proposed GEAs;
- increase the protection offered by the definition of low value shipments, and to protect against the selling price being artificially lowered in order to meet the conditions of the 'low value shipments' export authorisation;
- introduce an ex-ante notification and registration requirement to the Member States and the Commission, thus raising transparency, to introduce additional safeguards for export authorisation in relation to Annexes IId (Temporary Export for Exhibition or Fair), IIf (Telecommunications), and IIg (Chemicals);
- prohibit GEAs of items that could be used for launching of cyber-attacks, or of any other means of politically motivated hacking to conduct sabotage or espionage, to deface web pages, or to use denial-of-service attacks to take web pages down;
- prohibit GEAs to items that can be used by governments or business to violate fundamental human rights.

Low Value shipment: this is defined as items which are comprised in a single export contract and are dispatched by an exporter to a named consignee in one or more consignments the aggregate value of which does not exceed EUR 3000 (rather than EUR 5000). If a transaction or act proves to be part of an integral economic operation, the value of the whole operation shall be considered when calculating the value of this authorisation. Additional costs such as packaging and transport costs may be excluded from the calculation of the value only under certain conditions.