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

2008/0249(COD) - 05/04/2011 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament amended, under the ordinary legislative procedure, 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.

The vote on the legislative resolution was postponed to a later plenary session.

The main amendments made to the Commission's proposal are as follows:

Title of the Regulation: Parliament suggests 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). This amendment specifies that the three institutions agree to amend the last version of the regulation establishing the Community regime.

It is recalled that on 17 December 2008, the Commission presented to the Council a proposal to amend Regulation No 1334/2000. This was replaced by a new Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (recast) which entered into force on 27 August 2009. Accordingly, Regulation (EC) No 1334/2000 was repealed with effect from 27 August 2009.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.

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.

Dual Use Coordination Group: the text stipulates that 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: i) the Dual-Use Coordination Group (its activities, questions examined and consultations, as well as a list of exporters, brokers and stakeholders who have been consulted); ii) the implementation of Article 19(4), and shall contain a report on the stage reached in the set-up of the secure and encrypted system for the exchange of information among Member States and the Commission; and iii) 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.

Low-value shipments: a “low-value shipment” means 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 3 000 (compared to EUR 5 000 in the proposal). This amount should be reviewed each year, from 31 October 2112 onwards. 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.

Amendments to the Annexes:Parliament also introduced the following amendments to the Regulation’s annexes:

- specifiying that items should –only be exported towards countries that have been agreed consensually by the Member States;
- specifying that all exporters are required to inform the competent authorities of the Member State in which they are established of the first use of the authorisation no later than 30 days after the date of the first exportation or, in accordance with a requirement of the authority of the Member State where the exporter is established, before the first use of the general export authorisation. Each Member State may require exporters established on their territory to register themselves before the first use of the authorisation;
- introducing additional guarantees for the export authorisation;
- specifying that computers and related equipment are sensitive items and that they may not be covered by general EU export authorisations;
- specifying that general export authorisations should not be granted for items that can be used by governments or businesses to violate fundamental human rights.