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

2008/0249(COD) - 27/09/2011 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 567 votes to 89, with 12 abstentions, a legislative resolution 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.

The report had been sent back to the committee during the plenary session held on 5 April 2011.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between the European Parliament and the Council. They amend the Commission proposal 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).

In a recital, it is recalled that on 5 May 2009, the Council adopted Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (recast). Accordingly, Regulation (EC) No 1334/2000 has been repealed with effect from 27 August 2009.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: the amended Regulation 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, harmonise the scope of Union General Export Authorisations and conditions of their use among Union exporters and ensure efficiency and effectiveness of the security controls in the Union.

Prohibition to use authorisations:the amended text stipulates that **t**he competent authorities of the Member State where the exporter is established can prohibit the exporter from using these authorisations if there is reasonable suspicion about his ability to comply with an authorisation or with a provision of the export control legislation.

The competent authorities of the Member States shall exchange information on exporters deprived of the right to use a Union General Export Authorisation, unless they determine that the exporter will not attempt to export dual use items through another Member State.

Export of dual-use items to countries subject to an arms embargo: the amended text Regulation states that an authorisation shall also be required for the export of dual-use items not listed in Annex I if the purchasing country or country of destination is subject to an arms embargo decided by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe (OSCE) or to an arms embargo imposed by a binding resolution of the Security Council of the United Nations and if the exporter has been informed by the authorities that the items in question are or may be intended, in their entirety or in part, for a military end-use.

Exchange of information: A secure and encrypted system for the exchange of information between 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.

Annual report: the Commission shall submit an annual report to the European Parliament on the activities, examinations and consultations of the Dual-Use Coordination Group, which shall be subject to Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents.

Information and the implementation of the Regulation: each Member State shall inform the Commission of the laws, regulations and administrative provisions adopted in implementation of this Regulation. The Commission shall forward the information to the other Member States.

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.

In addition, no later than 31 December 2013, the Commission shall submit to the European Parliament and to the Council a report evaluating the implementation of this Regulation with a specific focus on the implementation of Annex IIb, Union General Export Authorisation No EU002, accompanied by, if appropriate, a legislative proposal to amend this Regulation, in particular as regards the issue of low-value shipments.

Mutual recognition agreements: the Council may authorise the Commission to negotiate with **third countries** agreements providing for the mutual recognition of export controls of dual-use items covered by this Regulation and in particular to eliminate authorisation requirements for re-exports within the territory of the Union.

Annexes: Parliament also introduced the following amendments to the annexes:

- any exporter who uses this authorisation must **notify** the competent authorities of the Member State where he is established of the **first use** of this authorisation no later than 30 days after the date when the first export takes place or, alternatively, and in accordance with a requirement by the authority of the Member State where the exporter is established, prior to the first use of this general export authorisation;
- introduce safeguards for the temporary export authorisation for exhibition or fair;
- **prohibit the granting of general authorisations from the EU for exports to certain countries** (South Africa, Argentina, China, South Korea, Croatia, India, Russia, Turkey, Ukraine) of **telecommunications technologies for use in connection with a violation of human rights**, democratic principles or freedom of speech as defined by the Charter of Fundamental Rights of the European Union, by using interception technologies and digital data transfer devices for monitoring mobile phones and text messages and targeted surveillance of internet use (e.g. via Monitoring Centres and Lawful Interception Gateways);
- specify the list of **chemicals** covered by the Union general export authorisation No.006.