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

2011/0310(COD) - 07/11/2011 - Legislative proposal

PURPOSE: to amend Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items by introducing delegated acts in order to update Annex I of the Regulation.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: Council Regulation (EC) No 428/2009 requires dual-use items to be subject to effective control when they are exported from or transit through the EU, or are delivered to a third country as a result of brokering services provided by a broker resident or established in the EU.

Annex I to the Regulation: this establishes the common list of dual-use items that are subject to controls in the EU. Decisions on the items subject to controls are taken within the framework of the Australia Group (AG), the Missile Technology Control Regime (MTCR), the Nuclear Suppliers Group (NSG), the Wassenaar Arrangement and the Chemical Weapons Convention (CWC). The Regulation 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. The international export control regimes take control list decisions approximately 4 times per year. These updates need to be integrated into EU legislation on a regular and timely basis due to their security and trade implications. **Currently, any update of Regulation (EC) No 428/2009 including of Annex I requires the use of the ordinary legislative procedure.** At the same time, given the technical nature of these amendments and the fact that these changes need to be in conformity with decisions taken in the international export control regimes, there is little margin for manoeuvre for introducing modifications to the amendments agreed in the regimes.

Consequently, it is necessary to introduce delegated acts in order to update Annex I of Regulation (EC) No 428/2009 on a regular basis. This approach would allow the Commission to make the necessary updates as and when required.

Annex II: Annex II sets out the EU General Export Authorisations currently in force in the EU. The Commission proposed in December 2008 to introduce six new EU General Export Authorisations. An agreement concerning these new Authorisations was reached in mid-2011. The contents of existing and future EU General Export Authorisations need to be continuously monitored in order to ensure that only low-risk transactions are covered by the Authorisations. Given the fast pace of developments around the world, there is a need to ensure that existing EU General Export Authorisations can be modified rapidly as regards their destination and item scopes, so that changing global circumstances can be properly reflected in the EU export control system. Consequently, it is **necessary to introduce delegated acts** in order to allow the Commission to rapidly remove destinations and/or items from the scope of existing EU General Export Authorisations.

IMPACT ASSESSMENT: no impact assessment has been carried out.

LEGAL BASIS: Article 207 TFEU.

CONTENT : the proposal introduces the following provisions :

- it empowers the Commission to adopt delegated acts concerning the removal of destinations and items from the scope of EU General Export Authorisations included in Annex II. It also makes provision for an urgent procedure where, in the case of a significant change of circumstances as regards the assessment of the sensitivity of exports under an EU General Export Authorisation included in Annex II, imperative grounds of urgency require a removal of particular destinations and/or items from the scope of an EU General Export Authorisation;

- it empowers the Commission to adopt delegated acts concerning updating the list of dual-use items set out in Annex, within the scope set out in the text.

The delegation of power shall be conferred for an indeterminate period of time and may be revoked at any time by the European Parliament or by the Council.

A delegated act adopted shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

BUDGETARY IMPLICATIONS: the proposal will not entail any additional cost for the EU budget.