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

2008/0249(COD) - 16/11/2011 - Final act

PURPOSE: to achieve uniform and consistent application of controls of exports of dual-use items and technology throughout the Community in order to avoid unfair competition among Community exporters and ensure efficiency of the security controls in the Community.

LEGISLATIVE ACT: Regulation (EU) No 1232/2011 of the European Parliament and of the Council amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items

CONTENT: following agreement at first reading with the European Parliament the Council adopted a regulation establishing new general export authorisations under the EU's regime for the control of exports of dual-use items.

The new regulation amends and supplements Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, which requires dual-use items to be controlled when they are exported from or transitted through the EU. These controls are designed in particular to prevent the proliferation of weapons of mass destruction. They meet the objectives set by United Nations Security Council resolution 1540(2004).

The new rules seek to achieve uniform and consistent application of controls throughout the Union in order to ensure a level playing field for EU exporters. They harmonise the scope of general export authorisations and the conditions of their use and to ensure efficiency of security controls.

The main points of the Regulation are as follows:

**Prohibition on authorisations**: the 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 such authorisation or with a provision of the export control legislation.

**Notification and registration**: 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 took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of this authorisation. A Member State may require the exporters established in that Member State to register prior to the first use of this authorisation.

**Export to a country subject to an arms embargo**: the amended Regulation stipulates that the general authorisation does not authorise the export of items where the exporter has been informed by the competent authorities of the Member State in which he is established that the items in question are or may be intended, in their entirety or in part for a military end-use in a country subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations, or if the exporter, under his obligation to exercise due diligence, is aware that the items in question are intended for such use.

**Telecommunications:** the new Regulation forbids EU general authorisations for export to certain countries (South Africa, Argentina, China, South Korea, Croatia, India, Russia, Turkey, Ukraine) 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).

**Exchange of information**: the competent authorities of 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. 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.

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 on public access to European Parliament, Council and Commission documents.

**Mutual recognition agreements**: without prejudice to the provisions on mutual administrative assistance agreements or protocols in customs matters concluded between the Union and third countries, 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.

**Implementation of the Regulation**: every 3 years the Commission shall review the implementation of the Regulation and present a comprehensive implementation and impact assessment report to the European Parliament and the Council, which may include proposals for its amendment. Member States shall provide to the Commission all appropriate information for the preparation of the report.

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.

ENTRY INTO FORCE: 07/01/2012.