

Control of exports, brokering, technical assistance, transit and transfer of dual-use items

2016/0295(COD) - 25/03/2021 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 642 votes to 37, with 9 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast).

The European Parliament's position adopted at first reading amends the Commission proposal as follows:

Regulation's objective

It is clarified that the Regulation aims to ensure that, in the field of dual-use items, the Union and its Member States take into account all relevant factors, including international obligations and commitments, obligations arising from relevant sanctions, foreign policy and national security considerations, including those relating to human rights, and considerations relating to the intended end-use and the risk of diversion.

Cyber-surveillance goods

The export of cyber-surveillance items not listed in Annex I would be subject to authorisation if the competent authority has informed the exporter that the items in question are or may be intended for use involving internal repression and/or the commission of serious and systematic violations of human rights and international humanitarian law.

The associated risks include cases where cyber-surveillance goods are specifically designed to enable the intrusion or deep packet inspection of information and telecommunication systems in order to conduct covert surveillance of individuals through the monitoring, extraction, collection and analysis of data from such systems, including biometric data.

Due diligence, information exchange

In order to enhance the effectiveness of export controls on unlisted cyber-surveillance items, Member States should support these controls by exchanging information with each other and with the Commission, in particular on technological developments related to cyber-surveillance items, and by exercising vigilance in the application of these controls in order to promote an exchange at EU level.

In order to enable the EU to react quickly to serious misuse of existing technologies or to new risks associated with emerging technologies, the mechanism put in place by the Regulation should enable Member States to coordinate their responses when a new risk is identified. Equivalent controls at multilateral level could thus be established to broaden the response to the identified risk.

A Member State could also prohibit or require authorisation for the export of dual-use items not listed in Annex I for reasons of public security, including the prevention of terrorist acts, or the safeguarding of human rights.

Export authorisations, brokering and technical assistance services

The Regulation should allow the following types of export authorisations to be issued: (a) individual export authorisations; (b) global export authorisations; (c) national general export authorisations.

Individual and global export authorisations should be granted by the competent authority of the Member State where the exporter is resident or established. They would have a maximum validity of two years, unless the competent authority decides otherwise.

Individual export authorisations should, in principle, be subject to an end-use statement. Global export authorisations could be made subject, where appropriate, to the provision of an end-use statement.

Exporters using global export authorisations should implement an internal compliance programme (ICP), unless the competent authority deems it unnecessary due to other circumstances which it has taken into account when processing the exporter's application for a global export authorisation.

Technical assistance authorisations should clearly indicate the end-user and its exact location.

Administrative cooperation, enforcement and control

Through this Regulation, the EU demonstrates its commitment to maintaining robust legal requirements with regard to dual-use items, as well as to strengthening the exchange of relevant information and greater transparency.

The Dual-Use Coordination Group should set up an enforcement coordination mechanism to support exchange of information and direct cooperation between competent authorities and enforcement agencies of the Member States.

Within the framework of the enforcement coordination mechanism, Member States and the Commission should exchange relevant information, including on the application, nature and effect of measures taken, on the application of best practice and unauthorised exports of dual-use items and/or on breaches of the Regulation and/or relevant national legislation.

The exchange of information should also cover best practice of national law enforcement authorities with regard to risk-based audits and the detection and prosecution of unauthorised exports of dual-use items.

The exchange of information under the enforcement coordination mechanism would be confidential.

Guidance for exporters

This Regulation also aims to strengthen the guidance to be given to exporters, in particular to small and medium-sized enterprises (SMEs), regarding responsible practices, yet without impairing the global competitiveness of exporters of dual-use items.

The provision of guidelines and/or recommendations for best practices to exporters, brokers and providers of technical assistance shall be the responsibility of the Member States where they are resident or established.

Parliament also approved a declaration by the Commission recognising the importance of a common capacity building and training programme in the field of licensing and enforcement for an effective EU export control system.