## Basic information

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|---|---|
| **2008/0249(COD)**<br>COD - Ordinary legislative procedure (ex-codecision procedure)<br>Regulation | Procedure completed |
| Dual-use items and technology: Community regime for the control of exports, transfer, brokering and transit<br>**Subject**<br>6.10.03 Armaments control, non-proliferation nuclear weapons<br>6.20.02 Export/import control, trade defence, trade barriers | |

## Key players

### European Parliament

| Committee responsible | Rapporteur | Appointed |
|---|---|---|
| INTA International Trade | LEICHTFRIED Jörg (S&D) | 17/03/2010 |
| | Shadow rapporteur<br>CASPARY Daniel (PPE)<br>CZARNECKI Ryszard (ECR)<br>HIGGINS Joe (GUE/NGL) | |

| Committee for opinion | Rapporteur for opinion | Appointed |
|---|---|---|
| AFET Foreign Affairs | BÜTIKOFER Reinhard (Verts/ALE) | 14/04/2010 |

### Council of the European Union

| Council configuration | Meetings | Date |
|---|---|---|
| Justice and Home Affairs (JHA) | 3121 | 2011-10-27 |

### European Commission

| Commission DG | Commissioner |
|---|---|
| Trade and Economic Security | DE GUCHT Karel |

## Key events

| Date | Event | Reference | Summary |
|---|---|---|---|
| 16/12/2008 | Legislative proposal published | COM(2008)0854 | Summary |

| | | | |
|---|---|---|---|
| 02/12/2009 | Additional information | | Summary |
| 11/03/2010 | Committee referral announced in Parliament, 1st reading | | |
| 26/01/2011 | Vote in committee, 1st reading | | Summary |
| 07/02/2011 | Committee report tabled for plenary, 1st reading | A7-0028/2011 | |
| 04/04/2011 | Debate in Parliament | | |
| 05/04/2011 | Decision by Parliament, 1st reading | T7-0125/2011 | Summary |
| 05/04/2011 | Results of vote in Parliament | | |
| 27/09/2011 | Decision by Parliament, 1st reading | T7-0406/2011 | Summary |
| 27/09/2011 | Results of vote in Parliament | | |
| 27/10/2011 | Act adopted by Council after Parliament's 1st reading | | |
| 16/11/2011 | Final act signed | | |
| 16/11/2011 | End of procedure in Parliament | | |
| 08/12/2011 | Final act published in Official Journal | | |

## Technical information

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| **Procedure reference** | 2008/0249(COD) |
| **Procedure type** | COD - Ordinary legislative procedure (ex-codecision procedure) |
| **Procedure subtype** | Legislation |
| **Legislative instrument** | Regulation |
| **Legal basis** | Treaty on the Functioning of the European Union TFEU 207-p2 |
| **Other legal basis** | Rules of Procedure EP 165 |
| **Stage reached in procedure** | Procedure completed |
| **Committee dossier** | INTA/7/02426 |

## Documentation gateway

**European Parliament**

| Document type | Committee | Reference | Date | Summary |
|---|---|---|---|---|
| Committee opinion | AFET | PE441.312 | 16/07/2010 | |
| Committee draft report | | PE443.007 | 23/08/2010 | |
| Amendments tabled in committee | | PE450.923 | 20/10/2010 | |
| Committee report tabled for plenary, 1st reading/single reading | | A7-0028/2011 | 07/02/2011 | |
| Text adopted by Parliament, partial vote at 1st reading /single reading | | T7-0125/2011 | 05/04/2011 | Summary |
| Text adopted by Parliament, 1st reading/single reading | | T7-0406/2011 | 27/09/2011 | Summary |

**Council of the EU**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Draft final act | 00038/2011/LEX | 16/11/2011 | |

**European Commission**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Legislative proposal | COM(2008)0854 | 16/12/2008 | Summary |
| Commission response to text adopted in plenary | SP(2011)8584 | 09/11/2011 | |

| Additional information | | |
|---|---|---|
| **Source** | **Document** | **Date** |
| European Commission | EUR-Lex | |

| Final act | |
|---|---|
| Regulation 2011/1232<br>OJ L 326 08.12.2011, p. 0026 | Summary |

# 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.

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

2008/0249(COD) - 16/12/2008 - Legislative proposal

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.

PROPOSED ACT: Council Regulation.

BACKGROUND: Council Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology requires dual-use items (including software and technology) to be subject to effective control when they are exported from the Community. Dual-use items (including software and technology) are civil items which can be used for military purposes. They are subject to control when they are to be exported from the European Union. These controls are designed in particular to prevent the proliferation of weapons of mass destruction.

To ensure that such control is fully effective and complies with Member States' commitments at multilateral level, authorisation is required under Article 3 of Regulation (EC) No 1334/2000 for export of the dual-use items listed in Annex I. There are four types of export authorisations:

1) Community General Export Authorisation (CGEA) No EU001, as referred to in Article 6 of Regulation 1334/2000, covers most of the exports of controlled items to seven countries (United States of America, Canada, Japan, Australia, New Zealand, Switzerland and Norway);

2) for all other exports for which an authorisation is required under the Regulation, it leaves to the *national* authorities the final decision as to whether to grant a national general, global or individual export licence.

National general export authorisations are created by individual EU Member States and are valid in principle across the EU. However, in spite of the requirements of Regulation (EC) No 1334/2000, there is a lack of transparency across Member States regarding both the scope and conditions of use of national general export authorisations and the list of exporters denied access to national general export authorisations. As a result, the chances of infringement of the Regulation are significant. This leads to regulatory treatment of certain exports that benefits businesses established in one Member State at least partly at the expense of businesses established in and national security interests of other Member States, and is not in the best interests of the Community as a whole.

In its Communication of 18 December 2006, the Commission put forward the idea of the creation of new Community General Export Authorisations in a bid to simplify the

current legal system, enhance the industry's competitiveness and establish a level playing field for all Community exporters when they export certain items to certain

destinations.

IMPACT ASSESSMENT: this initiative does not create new administrative burdens for companies. The objective is to provide exporters with a more comprehensive instrument than national authorisations — valid throughout the European Union. Even if it impossible to measure the exact impact, it is clear that the initiative will have a positive operational impact on exporters, that there will be no negative impact at EU level and that this narrow legislative initiative would have no far-reaching economic, social or environmental impact beyond the dual-use goods regime.

LEGAL BASIS: *please refer to the summary entitled "background note".*

CONTENT: in order to create new Community General Export Authorisations for certain non-sensitive dual-use items to certain non-sensitive countries, the relevant provisions of Regulation (EC) No 1334/2000 need to be amended by the addition of six new Annexes.

The draft proposal covers six new CGEAs. Compared to the preferences expressed by the Working Party sub-group on new CGEAs, this proposal has added a number of countries and items and made a number of changes to the conditions of use of the authorisations.

In addition, the draft Regulation states that the competent authorities of the Member State where the exporter is established should be provided with the possibility of not permitting the use of the Community General Export Authorisations foreseen in this Regulation where the exporter has been sanctioned of an export-related offence punishable by the withdrawal of the right to use these authorisations.

BUDGETARY IMPLICATION: this proposal has no implication on the EU budget.

# 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.

# 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.