Basic information

2011/0310(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Dual-use items: Community regime for the control of exports, transfer, brokering and transit, update of the EU control list **Subject** 6.10.03 Armaments control, non-proliferation nuclear weapons 6.20.02 Export/import control, trade defence, trade barriers 6.20.05 Multilateral and plurilateral economic and trade agreements and relations	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
INTA International Trade	FJELLNER Christofer (PPE)	19/03/2014
	Shadow rapporteur LEICHTFRIED Jörg (S&D) SCHAAKE Marietje (ALDE) KELLER Ska (Verts/ALE) ZAHRADIL Jan (ECR) MURPHY Paul (GUE/NGL)	

Former committee responsible	Former rapporteur	Appointed
INTA International Trade	FJELLNER Christofer (PPE)	25/01/2012

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	3298	2014-03-03

European Commission

Commission DG	Commissioner
Trade and Economic Security	DE GUCHT Karel

Key events

Date	Event	Reference	Summary
07/11/2011	Legislative proposal published	COM(2011)0704	Summary
15/11/2011	Committee referral announced in Parliament, 1st reading		
12/07/2012	Vote in committee, 1st reading		
16/07/2012	Committee report tabled for plenary, 1st reading	A7-0231/2012	Summary
23/10/2012	Decision by Parliament, 1st reading	T7-0383/2012	Summary
23/10/2012	Results of vote in Parliament		
23/10/2012	Debate in Parliament		
05/03/2014	Council position published	18086/1/2013	Summary
13/03/2014	Committee referral announced in Parliament, 2nd reading		
20/03/2014	Vote in committee, 2nd reading		
21/03/2014	Committee recommendation tabled for plenary, 2nd reading	A7-0236/2014	Summary
03/04/2014	Decision by Parliament, 2nd reading	T7-0277/2014	Summary
03/04/2014	Debate in Parliament		
16/04/2014	Final act signed		
16/04/2014	End of procedure in Parliament		
12/06/2014	Final act published in Official Journal		

Technical information

Procedure reference	2011/0310(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
Stage reached in procedure	Procedure completed
Committee dossier	INTA/7/15372

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE483.533	08/05/2012	
Amendments tabled in committee		PE492.621	26/06/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0231/2012	16/07/2012	Summary

Text adopted by Parliament, 1st reading/single reading		T7-0383/2012	23/10/2012	Summary
Committee draft report		PE529.923	06/03/2014	
Committee recommendation tabled for plenary, 2nd reading		A7-0236/2014	21/03/2014	Summary
Text adopted by Parliament, 2nd reading		T7-0277/2014	03/04/2014	Summary

Council of the EU

Document type	Reference	Date	Summary
Council statement on its position	06700/2014	21/02/2014	
Council position	18086/1/2013	05/03/2014	Summary
Draft final act	00086/2014/LEX	16/04/2014	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2011)0704	07/11/2011	Summary
Commission response to text adopted in plenary	SP(2012)767	15/11/2012	
Commission communication on Council's position	COM(2014)0151	06/03/2014	Summary
Follow-up document	COM(2019)0562	04/11/2019	Summary
Follow-up document	COM(2021)0042	03/02/2021	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2011)0704	08/03/2012	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Regulation 2014/0599
OJ L 173 12.06.2014, p. 0079 Summary

Delegated acts	
Reference	Subject
2015/2911(DEA)	Examination of delegated act
2017/2865(DEA)	Examination of delegated act
2016/2889(DEA)	Examination of delegated act
2018/2875(DEA)	Examination of delegated act
2020/2819(DEA)	Examination of delegated act

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

2011/0310(COD) - 16/07/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on international Trade adopted the report by Christofer FJELLNER (PPE, SE) on the proposal for a 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.

The Committee recommends that the European Parliament adopts its position at first reading in accordance with the ordinary legislative procedure in modifying the Commission's proposal in respect of the system for delegated acts laid down in Article 290 of the TFEU.

Members call for the Commission to ensure that the **European Parliament is duly involved**, drawing on best practices from previous experience in other policy areas in order to create the best possible conditions for future scrutiny of delegated acts by the European Parliament.

The delegation of power shall be conferred on the Commission for a period of **five years** from the entry into force of the Regulation, a period that shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

The report specifies that where the updating of Annex I concerns dual-use items which are also listed in Annexes IIa-g or IV, those Annexes shall be amended accordingly.

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.

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

2011/0310(COD) - 04/11/2019 - Follow-up document

The Commission presents a report on the implementation of Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.

Evolution of the policy and regulatory framework

The legislative process for a modernisation of EU export controls, that started in 2016 as the European Parliament and the Council examined the Commission proposal, advanced in 2018 with the adoption of a report and position of the European Parliament on 17 January 2018. The Parliament's position includes 101 amendments demonstrating its broad support for more harmonised and effective controls, adapting the EU export control system to new threats associated with cyber-surveillance technologies and taking into consideration human rights as part of the overall thrust for more responsible value-based trade and a "Europe that protects". For its part, the Council continued to examine the proposal during 2018.

Amendments to Regulation (EC) No 428/2009 - technical changes

The 2018 EU control list introduced new controls on electro-optic modulators (3A001i) semiconductor manufacturing mask substrate blanks (3B001j and for Focal Plane Array (FPA) readout integrated circuits (ROIC) (6A002f). On the other hand, it removes control on robots with 3D image processing (2B007a), on technology for numerical control units (2E003b) and machine tool instruction generators (2E003d) and introduces new decontrols for ‘upgrade’ intrusion software (4D004), technology for ‘vulnerability disclosure’ and ‘cyber incident response’ (4E001) as well as on high speed cinema film recording and mechanical cameras (6A003a). The 2018 EU control list also incorporates changes to the controls on measuring and inspection equipment (2B006), marine gas turbines (9A002) and ground based spacecraft control equipment (9A004) as well as for flow-forming machines (2B109) to missile production, satellite navigation systems (7A105) to include regional as well as global systems and turbojet/fan engines (9A101).

The updated and consolidated EU Control List became applicable on 15 December 2018, thereby allowing the EU to adhere to its international commitments with regard to export controls and helping EU exporters where control parameters were relaxed.

The Commission also adopted on 19 December 2018 a proposal to amend the Regulation as part of a package of measures under a "no deal contingency plan" for certain sectors in the perspective of the United Kingdom’s withdrawal from the European Union. The proposal adds the United Kingdom to the list of destinations on EU001 in order to avoid disproportionate trade disruptions and excessive administrative burden for EU exports of dual-use items to the United Kingdom while preserving international and EU security.

Dual- Use Coordination Group (DUCG)

The DUCG held seven meetings during the reporting period, thus providing a forum for consultations on a number of topical issues concerning the implementation of the Regulation. DUCG experts also participated in a Technical Seminar in preparation of the United Kingdom's withdrawal from the European Union.

EU dual-use trade: items and destinations

In 2018, the Regulation primarily applied to the export of about 1846 dual-use "items" listed in Annex I (the EU Control List) and classified in 10 categories. These dual-use items relate to circa 1000 customs commodities, including chemicals, metals and non-metallic mineral products, computers, electronic and optical products, electrical equipment, machinery, vehicles and transport equipment etc. and typically fall at the high–tech end of this large, mixed commodity area. Statistical estimates of the relative importance of dual-use trade indicate that dual-use exports represent about 2.3% of EU total exports (intra and extra-EU), within a broad 'dual-use export domain' of customs commodities.

EU dual-use trade control: applications, licences, denials

The total value of applications reached EUR 50.2 billion and controlled dual-use exports thus represented 2.7% of total extra-EU exports. Authorised dual-use trade amounted to EUR 36.6 billion, representing 2.0% of total extra-EU exports, with a majority of transactions authorised under individual licenses (approx. 25600 single licenses issued in 2017) and global licenses (by their value). Only a small portion of exports were actually denied: approximately 631 denials were issued in 2017, representing about 1.5% of the value of controlled dual-use exports in that year, and 0.04% of total extra-EU exports.

Exercise of delegated acts

Since the entry into force of the delegation of competence in 2014, the Commission adopted five delegated acts.

The Commission invites the European Parliament and the Council to take note of this report in the context of proper exercise by the Commission of the powers delegated by the EU Regulation.

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

2011/0310(COD) - 23/10/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 378 votes to 263, with 17 abstentions, a legislative resolution on the proposal for a 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.

Parliament adopted its position on first reading following the ordinary legislative procedure and made the following amendments to the Commission proposal:

Dual use items in Annex I: Members state that the list of dual-use items set out in Annex I shall 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, as well as in conformity with any restrictive measure adopted based on Article 215 TFEU.

Authorisations for dual use items not listed in Annex I: an authorisation shall also be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the relevant authorities that the items in question are or may be intended, in their entirety or in part, **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 or lawful interception gateways).

A Member State that imposes an authorisation requirement, on the export of a dual use item not listed in Annex I, shall, where appropriate, inform the other Member States and the Commission. The other Member States shall give all due consideration to this information, shall inform their customs administration and other relevant national authorities and impose the same authorisation requirement.

A Member State shall prohibit or impose an authorisation requirement on the export of dual-use items not listed in Annex I for reasons of public security or human rights considerations.

Delegated acts: when preparing and drawing up delegated acts, the Commission should provide full information and documentation on its meetings with national experts within the framework of its work on the preparation and implementation of delegated acts. In this respect, the Commission should ensure that the European Parliament is duly involved, drawing on best practices from previous experience in other policy areas in order to create the best possible conditions for future scrutiny of delegated acts by the European Parliament. The delegation of power shall be conferred on the Commission for a period of five years from the entry into force of the Regulation, a period that shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

Parliament specifies that where the updating of Annex I concerns dual-use items which are also listed in Annexes IIa-g or IV, those Annexes shall be amended accordingly.

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

2011/0310(COD) - 05/03/2014 - Council position

The Council adopted its position at first reading with a view to the adoption of a 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.

The Council's Position reflects the compromise reached in negotiations between the Council and the European Parliament as also facilitated by the Commission.

The Council agreed with the main thrust of the proposal as regards the procedure for updating the EU control list (Annex I) through delegated acts. Modifications were introduced regarding the following main issues:

- **a more explicit scope** was provided for the delegated acts to remove destinations from the EU General Export Authorisations, i.e. if such destinations become subject to an arms embargo;
- **the period of the conferral of the power of delegation to the Commission was specified to be five years**, tacitly renewable;
- in case the updates of the EU control lists (Annex I) concern dual-use items which are also listed in certain other Annexes of the Regulation, those Annexes are to be amended accordingly.

In addition, the European Parliament, the Council and the Commission recognised, in a **Joint Statement**, the importance of continuously enhancing the effectiveness and coherence of the EU's strategic export controls regime, ensuring high level of security and adequate transparency without impeding competitiveness and legitimate trade in dual-use items. This will continue to be addressed also in the context of the on-going review of EU dual-use export control policy.

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

2011/0310(COD) - 06/03/2014 - Commission communication on Council's position

The Commission communication concerns the position of the Council on the adoption of a 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.

The Council's position endorses the core elements of the Commission's proposal but envisages some amendments to the original Commission proposal with respect to the removal of certain destinations (countries) benefiting from facilitated export procedures and the scope of delegated acts.

The Council position:

- suggests aligning Parliament's scrutiny of delegated power to the agreement on "Trade Omnibus II". A "Commission statement on delegated acts", recalling the Commission's commitment under the framework agreement to provide information to Parliament on expert groups, will be attached to the Regulation;
- also envisages certain amendments as regards the review and validity of the delegation of powers, which would be limited to 5 years and tacitly extended subject to presentation of a report, unless the European Parliament or the Council opposes such extension no later than 3 months before the end of the period.

Lastly, the Council position includes an accompanying "Joint Statement by the European Parliament, the Council and the Commission on the review of the dual-use export control system", as well as a "Commission statement on updating the Regulation".

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

2011/0310(COD) - 21/03/2014 - Committee recommendation tabled for plenary, 2nd reading

The Committee on International Trade adopted the recommendation for second reading contained in the report by Christofer FJELLNER (EPP, SE), on the Council position at first reading with a view to the adoption of a 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.

The committee recommended **approval of the Council position at first reading without amendment, a**s well as approval of the joint statement by the three institutions on the review of the dual-use export control system. It took note of the Commission statements on delegated acts and on reform of the approach to the movement of strategic items.

In **the joint statement**, the European Parliament, the Council and the Commission recognised the importance of continuously enhancing the effectiveness and coherence of the EU's strategic export controls regime, ensuring high level of security and adequate transparency without impeding competiveness and legitimate trade in dual-use items. To this, the three institutions undertook to:

- modernise and ensure further convergence of the system in order to keep up with new threats and rapid technological changes, to reduce distortions, create a genuine common market for dual-use items (uniform level playing field for exporters) and continue serving as an export control model for third countries;

- streamline the process for updating the control lists (Annexes to the Regulation), strengthen risk assessment and exchange of information, develop improved industry standards, and reduce disparities in implementation.

The European Parliament, the Council and the Commission acknowledged the issues regarding the export of certain information and communication technologies (ICT) that could be used in connection with **human rights violations and to undermine the EU's security**, particularly for technologies used for mass-surveillance, monitoring, tracking, tracing and censoring, as well as for software vulnerabilities.

Technical consultations had been initiated in this respect, and actions continued to be taken to address situations of urgency through sanctions, or national measures. Efforts would also be intensified to promote multilateral agreements in the context of export control regimes.

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

2011/0310(COD) - 03/04/2014 - Text adopted by Parliament, 2nd reading

The European Parliament **approved, without amendment**, the Council position at first reading with a view to the adoption of a 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.

Parliament also approved a common statement of the European Parliament, the Council and the Commission on the review of the dual-use export control system.

The statement recognised the importance of continuously enhancing the effectiveness and coherence of the EU's strategic export controls regime, ensuring high level of security and adequate transparency without impeding competiveness and legitimate trade in dual-use items.

The three institutions undertook to:

- **modernise and ensure further convergence of the system** in order to keep up with new threats and rapid technological changes, to reduce distortions, create a genuine common market for dual-use items (uniform level playing field for exporters) and continue serving as an export control model for third countries. To this end, it is essential to streamline the process for updating the control lists (Annexes to the Regulation);

- **focus on the issues regarding the export of certain information and communication technologies (ICT) that can be used in connection with human rights violations** as well as to undermine the EU's security, particularly technologies used for mass-surveillance, monitoring, tracking, tracing and censoring, as well as for software vulnerabilities. Technical consultations have been initiated in this respect and actions continue to be taken to address situations of urgency through sanctions. Efforts will also be intensified to promote multilateral agreements in the context of export control regimes;

- **further develop the existing 'catch-all' mechanism** for dual-use items falling outside the Annex I of the Regulation, in order to further enhance the export control system and its application within the European single market.

The Commission also made two statements in which it committed itself to: (i) provide to the Parliament full information and documentation on its meetings with national experts within the framework of its work on the preparation of delegated acts; and (ii) put forward a new proposal for updating the Regulation as expeditiously as possible.

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

2011/0310(COD) - 16/04/2014 - Final act

PURPOSE: to allow the regular update of certain Annexes of Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.

LEGISLATIVE ACT: Regulation (EU) No 599/2014 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: 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 Union, or are delivered to a third country as a result of brokering services provided by a broker resident or established in the Union.

The amendments introduced by the new Regulation aims to **guarantee regular and timely updates, by means of Commission delegated acts, the list of EU dual-use items** subject to controls, in conformity with the obligations and commitments accepted by Member States in the context of international export control arrangements.

In addition, in order to allow for a swift Union response to changing circumstances as regards the assessment of the sensitivity of exports under Union General Export Authorisations, as regards the removal of destinations from the scope of the Union General Export Authorisations, where this proves necessary in some cases, in order to ensure that only low-risk transactions are covered.

The power to adopt delegated acts shall be conferred on the Commission for a period of **five years from 2 July 2014** (with tacit renewal for periods of the same duration). The European Parliament or the Council may object to a delegated act within a period of two months from the date of notification (this period can be extended for two months). If the European Parliament or the Council make objections, the delegated act will not enter into force.

The Regulation contains:

- **Joint Statement by the European Parliament, the Council and the Commission** on the review of the dual-use export control system: The three institutions recognise the importance of continuously enhancing the effectiveness and coherence of the EU's strategic export controls regime, ensuring a high level of security and adequate transparency without impeding competitiveness and legitimate trade in dual-use items.

- A statement whereby the Commission recalls the commitment it has taken to provide to the Parliament full information and documentation on its meetings with national experts within the framework of its work on the preparation of **delegated acts**.

- A statement whereby the Commission indicates that it shall put forward a **new proposal** for updating the Regulation as expeditiously as possible.

ENTRY INTO FORCE: 02.07.2014.