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AMENDMENTS: 118

Klaus Buchner

Setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast)

Proposal for a regulation COM(2016)0616 - C8-0393/2016 – 2016/0295(COD)

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Amendments per language:

EN: 118

Amendment 1
Marietje Schaake

Proposal for a regulation
Title 1

Text proposed by the Commission

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)

Amendment

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 **and**
cyber-surveillance technologies (recast)

Or. en

Amendment 2
Marietje Schaake

Proposal for a regulation
Recital 5

Text proposed by the Commission

(5) *Considering the emergence of new categories of dual-use items, and* in response to calls from the European Parliament **and indications** that certain cyber-surveillance **technologies exported from the Union** have been misused by persons complicit in or responsible for directing or committing **serious** violations of human rights or international humanitarian law in **situations of armed conflict or internal repression**, it is appropriate to control the export of those technologies **in order to protect public security as well as public morals. These measures should not go beyond what is proportionate. They should, in particular, not prevent the export of information and communication technology used for**

Amendment

(5) **Certain cyber-surveillance technologies have emerged as a new category of items that have been used to directly interfere with human rights, including the right to privacy, the right to data protection, freedom of expression and freedom of assembly and association, by monitoring or exfiltrating data without obtaining a specific, informed and unambiguous authorization of the owner or administrator of the system and/or by incapacitating or damaging the targeted system.** In response to calls from the European Parliament, **and evidence** that certain cyber-surveillance **tools** have been misused by persons complicit in or responsible for directing or committing violations of **international** human rights

legitimate purposes, including law enforcement and internet security research. The Commission, in close consultations with the Member States and stakeholders, will develop guidelines to support the practical applications of those controls.

law or international humanitarian law in countries where serious human rights violations have been established, it is appropriate to control the export of those technologies. Serious human rights violations refer to situations as described in the User's Guide to Council Common Position 2015/944/CFSP defining common rules governing the control of exports of military technology and equipment, as endorsed by the Foreign Affairs Council on 20 July 2015.

Or. en

Amendment 3 **Marietje Schaake**

Proposal for a regulation **Recital 6**

Text proposed by the Commission

(6) As a result, it is also appropriate to **revise the definition of dual-use items, and to** introduce a definition of cyber-surveillance technology. It should also be clarified that assessment criteria for the control of exports of dual-use items **include considerations regarding their possible misuse in connection with** acts of terrorism **or human rights violations.**

Amendment

(6) As a result, it is also appropriate to introduce a definition of cyber-surveillance technology. It should also be clarified that assessment criteria for the control of exports of dual-use items **and cyber-surveillance technology takes into account the direct and indirect impact of these technologies on human rights, as well as their impact on the prevention of** acts of terrorism, **as reflected in the User's Guide to Council Common Position 2015/944/CFSP defining common rules governing the control of exports of military technology and equipment.**

Or. en

Amendment 4 **Marietje Schaake**

Proposal for a regulation **Recital 6 a (new)**

(6 a) These measures should not go beyond what is necessary and proportionate. They should, in particular, not prevent the export of information and communication technology used for legal purposes, including law enforcement and network and security research for the purposes of authorised testing or the protection of information security systems. The Commission, in close consultations with the Member States and stakeholders, will develop guidelines to support the practical applications of those controls.

Or. en

Justification

This brings the proposal in line with the definitions and objectives of regulation 526/2013, which promotes the sharing of information and best practices on information security, including with third countries to promote international cooperation on network and information security issues. It further avoids significant unintended negative consequences for security research, by ensuring that numerous practices and tools critical to the information security systems are not covered by the regulation.

Amendment 5
Marietje Schaake

Proposal for a regulation
Recital 7

Text proposed by the Commission

Amendment

(7) Transmission of dual-use software and technology by means of electronic media, fax or telephone to destinations outside the Union should also be controlled. In order to limit the administrative burden for exporters and the competent authorities of the Member States, the definition of export should however be revised to exclude

(7) Transmission of dual-use ***and cyber-surveillance*** software and technology by means of electronic media, fax or telephone to destinations outside the Union should also be controlled. In order to limit the administrative burden for exporters and the competent authorities of the Member States, the definition of export should however be revised to exclude

transmissions which do not pose a grave risk of proliferation or other misuse covered by this Regulation.

transmissions which do not pose a grave risk of proliferation or other misuse covered by this Regulation.

Or. en

Amendment 6
Marietje Schaake

Proposal for a regulation
Recital 7 a (new)

Text proposed by the Commission

Amendment

(7 a) The general data protection regulation (Regulation 2016/679) in art 32(1)a obliges data protection controllers and processors to implement technical measures to ensure a level of security appropriate to the risk of processing, including by the encryption of personal data. Since art.3 of that regulation stipulates that the regulation applies to the processing of personal data regardless of whether the processing takes place in the Union or not, there is a strong incentive for the EU to remove cryptography items from the control list in order to facilitate the implementation of the GDPR, and increase the competitiveness of European businesses in this context. Additionally, the current level of control on encryption runs counter to the fact that encryption is a key means to ensure that citizens, businesses and governments can protect their data against criminals and other malicious actors, to secure access to services that are crucial for the functioning of the Digital Single Market, and to enable secure communications, which are necessary to protect the right to privacy, the right to data protection and the freedom of expression, in particular for human rights defenders.

Or. en

Amendment 7
Marietje Schaake

Proposal for a regulation
Recital 8

Text proposed by the Commission

(8) Considering that various categories of persons may be involved in the export of dual-use items, including natural persons such as service providers, researchers, consultants and persons transmitting dual-use items electronically, the definition of exporter, and its application to natural persons, should be clarified.

Amendment

(8) Considering that various categories of persons may be involved in the export of dual-use items **and cyber-surveillance technologies**, including natural persons such as service providers, researchers, consultants and persons transmitting dual-use items electronically, the definition of exporter, and its application to natural persons, should be clarified.

Or. en

Amendment 8
Marietje Schaake

Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) The scope of "catch-all controls", that apply to non-listed dual use items in specific circumstances, should be clarified and harmonised, and should address the risk of **terrorism** and human rights violations. Appropriate exchange of information and consultations on "catch all controls" should ensure the effective and consistent application of controls throughout the Union. Targeted catch-all controls should also apply, under certain conditions, to the export of cyber-surveillance technology.

Amendment

(9) The scope of "catch-all controls", that apply to non-listed dual use items **and cyber-surveillance technologies** in specific circumstances, should be clarified and harmonised, and should address the risk of **terrorist acts** and human rights violations. Appropriate exchange of information and consultations on "catch all controls" should ensure the effective and consistent application of controls throughout the Union. Targeted catch-all controls should also apply, under certain conditions, to the export of cyber-surveillance technology.

Or. en

Amendment 9
Marietje Schaake

Proposal for a regulation
Recital new(12)

Text proposed by the Commission

new(12) Regulation (EC) No 428/2009 provides for a possibility for Member States' authorities to prohibit on a case-by-case basis the transit of non-Union dual-use items, where they have reasonable grounds for suspecting from intelligence or other sources that the items are or may be intended in their entirety or in part for proliferation of weapons of mass destruction or of their means of delivery. For reasons of effectiveness and consistency, transit controls should be harmonised and apply also in order to prevent acts of terrorism and human rights violations.

Amendment

new(12) Regulation (EC) No 428/2009 provides for a possibility for Member States' authorities to prohibit on a case-by-case basis the transit of non-Union dual-use items **or cyber-surveillance technologies**, where they have reasonable grounds for suspecting from intelligence or other sources that the items are or may be intended in their entirety or in part for proliferation of weapons of mass destruction or of their means of delivery. For reasons of effectiveness and consistency, transit controls should be harmonised and apply also in order to prevent acts of terrorism and human rights violations.

Or. en

Amendment 10
Marietje Schaake

Proposal for a regulation
Recital 13

Text proposed by the Commission

(13) Licensing conditions and requirements, including the period of validity and licensing timelines for individual and global authorisations, should be harmonised in order to avoid distortions of competition and ensure the consistent and effective application of controls throughout the Union. To this effect, it is also necessary to ensure a clear determination of the competent authority in all control situations. The responsibility for deciding on individual, global or national

Amendment

(13) Licensing conditions and requirements, including the period of validity and licensing timelines for individual and global authorisations, should be harmonised in order to avoid distortions of competition and ensure the consistent and effective application of controls throughout the Union. To this effect, it is also necessary to ensure a clear determination of the competent authority in all control situations. The responsibility for deciding on individual, global or national

general export authorisations, on authorisations for brokering services and technical assistance , as well as on transits of non-Union dual-use items, lies with national authorities.

general export authorisations, on authorisations for brokering services and technical assistance , as well as on transits of non-Union dual-use items ***or cyber-surveillance technologies***, lies with national authorities.

Or. en

Amendment 11
Marietje Schaake

Proposal for a regulation
Recital 16

Text proposed by the Commission

(16) Common lists of dual-use items, destinations and guidelines are essential elements for an effective export control regime.

Amendment

(16) Common lists of dual-use items, ***cyber-surveillance technologies***, destinations and guidelines are essential elements for an effective export control regime.

Or. en

Amendment 12
Marietje Schaake

Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16 a) Considering the rapid advance of technological developments, it is appropriate that the Union introduces controls on certain types of cyber-surveillance technologies on the basis of a unilateral list, in section B of Annex I. Given the importance of the multilateral export control system, it is appropriate that section B of Annex I is limited in scope only to cyber-surveillance technologies and does not contain any duplications with section A of Annex I.

Or. en

Amendment 13
Marietje Schaake

Proposal for a regulation
Recital 17

Text proposed by the Commission

(17) Decisions to update the common list of dual-use items subject to export controls in Section A of Annex I should be in conformity with the obligations and commitments that Member States and the Union have accepted as members of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties. Decisions to update the common list of *dual-use items* subject to export controls in Section B of Annex I, *such as cyber-surveillance technology*, should be made in consideration of the risks that the export of such items may pose as regards *the commission of serious* violations of human rights or international humanitarian law or the essential security interests of the Union and its Member States. Decisions to update the common list of dual-use items subject to export controls in Section B of Annex IV should be made in consideration of the public policy and public security interests of the Member States under Article 36 of the Treaty on the Functioning of the European Union. Decisions to update the common lists of items and destinations set out in Sections A to J of Annex II should be made in consideration of the assessment criteria set out in this Regulation.

Amendment

(17) Decisions to update the common list of dual-use items subject to export controls in Section A of Annex I should be in conformity with the obligations and commitments that Member States and the Union have accepted as members of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties. Decisions to update the common list of *cyber-surveillance technologies* subject to export controls in Section B of Annex I, should be made in consideration of the risks that the export of such items may pose as regards *use for* violations of *international* human rights law or international humanitarian law *in countries where serious human rights violations have been established*, or the essential security interests of the Union and its Member States. Decisions to update the common list of dual-use items subject to export controls in Section B of Annex IV should be made in consideration of the public policy and public security interests of the Member States under Article 36 of the Treaty on the Functioning of the European Union. Decisions to update the common lists of items and destinations set out in Sections A to J of Annex II should be made in consideration of the assessment criteria set out in this Regulation.

Or. en

Amendment 14
Marietje Schaake

Proposal for a regulation
Recital 18

Text proposed by the Commission

(18) 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 well as technological and commercial developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending Section A of Annex I, Annex II and Section B of Annex IV to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

Amendment

(18) 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 well as technological and commercial developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending Section A of Annex I, Annex II and Section B of Annex ***I and Annex*** IV to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

Or. en

Amendment 15
Marietje Schaake

Proposal for a regulation
Recital 19

Text proposed by the Commission

(19) National provisions and decisions

Amendment

(19) National provisions and decisions

affecting exports of dual-use items should be taken in the framework of the common commercial policy, and in particular Regulation (EU) 2015/479 of the European Parliament and of the Council¹⁶.

Appropriate exchange of information and consultations on national provisions and decisions should ensure the effective and consistent application of controls throughout the Union.

¹⁶ Regulation (EU) 2015/479 of the European Parliament and of the Council on common rules for exports (OJ L83, 27.03.2015, p. 34).

affecting exports of dual-use items **and cyber-surveillance technologies** should be taken in the framework of the common commercial policy, and in particular Regulation (EU) 2015/479 of the European Parliament and of the Council¹⁶.

Appropriate exchange of information and consultations on national provisions and decisions should ensure the effective and consistent application of controls throughout the Union.

¹⁶ Regulation (EU) 2015/479 of the European Parliament and of the Council on common rules for exports (OJ L83, 27.03.2015, p. 34).

Or. en

Amendment 16
Marietje Schaake

Proposal for a regulation
Recital 22 a (new)

Text proposed by the Commission

Amendment

(22 a) Given the importance of accountability and public scrutiny of export control activities, it is appropriate that Member States should make publicly available all relevant licensing data.

Or. en

Amendment 17
Marietje Schaake

Proposal for a regulation
Recital 25

Text proposed by the Commission

Amendment

(25) Outreach to the private sector and transparency are essential elements for an effective export control regime. It is

(25) Outreach to the private sector and transparency are essential elements for an effective export control regime. It is

therefore appropriate to provide for the continued development of **guidance** to support the application of this Regulation and for the publication of an annual report on the implementation of controls, in line with current practice.

therefore appropriate to provide for the continued development of **guidelines** to support the application of this Regulation and for the publication of an annual report on the implementation of controls, in line with current practice. ***Given the importance of guidelines for the interpretation of some elements of this Regulation, it is appropriate that these guidelines shall be publicly available when this Regulation enters into force.***

Or. en

Amendment 18 **Marietje Schaake**

Proposal for a regulation **Recital 27**

Text proposed by the Commission

(27) Each Member State should determine effective, proportionate and dissuasive penalties applicable in the event of breach of the provisions of this Regulation. It is also appropriate to introduce provisions to tackle specifically instances of illicit trafficking of dual-use items in order to support effective enforcement of controls.

Amendment

(27) Each Member State should determine effective, proportionate and dissuasive penalties applicable in the event of breach of the provisions of this Regulation. It is ***desirable to achieve a level-playing field and a coherent approach and therefore it is appropriate that penalties in each Member State are similar in nature and effect.*** It is also appropriate to introduce provisions to tackle specifically instances of illicit trafficking of dual-use items in order to support effective enforcement of controls.

Or. en

Amendment 19 **Marietje Schaake**

Proposal for a regulation **Article 1 – paragraph 1**

Text proposed by the Commission

This Regulation sets up a Union regime for

Amendment

This Regulation sets up a Union regime for

the control of exports, brokering , technical assistance, transit and transfer of dual-use items.

the control of exports, brokering , technical assistance, transit and transfer of dual-use items *and cyber-surveillance technologies*.

Or. en

Amendment 20
Marietje Schaake

Proposal for a regulation
Article 2 – paragraph 1 – point 1 – point b

Text proposed by the Commission

Amendment

(b) cyber-surveillance technology which can be used for the commission of serious violations of human rights or international humanitarian law, or can pose a threat to international security or the essential security interests of the Union and its Member States.

deleted

Or. en

Amendment 21
Marietje Schaake

Proposal for a regulation
Article 2 – paragraph 1 – point 1 a (new)

Text proposed by the Commission

Amendment

1 a. 'cyber-surveillance technology' shall mean items which can be used to directly interfere with human rights, including the right to privacy, the right to free speech and the freedom of assembly and association, or which can be used for the commission of serious violations of human rights law or international humanitarian law, or can pose a threat to international security or the essential security of the Union and its Members states and which are specially designed to enable the covert intrusion into information and telecommunication systems with a view to monitoring,

exfiltrating, collecting and analysing data and/or incapacitating or damaging the targeted system without the specific, informed and unambiguous authorisation of the owner or the administrator of the systems. This includes items related to the following technology and equipment:

- (a) mobile??telecommunication??interception??equipment??*
- (b) intrusion??software??*
- (c) monitoring??centers??*
- (d) lawful??interception??systems??and??data??retention??systems??*

Or. en

Justification

Given the specific nature of cyber-surveillance technologies, both in terms of their potential uses and in terms of their potential impacts on human rights, it is essential to distinguish these technologies from other dual-use items. A separate definition creates more legal certainty for both national authorities and exporters, which allows for a more differentiated approach towards these items throughout the regulation. Further, it is important to clarify which human rights are directly violated using cyber-surveillance technologies.

Amendment 22 **Marietje Schaake**

Proposal for a regulation **Article 2 – paragraph 2**

Text proposed by the Commission

Where the benefit of a right to dispose of the dual-use item belongs to a person resident or established outside the Union pursuant to the contract on which the export is based, the exporter shall be considered to be the contracting party resident or established in the Union.

Amendment

Where the benefit of a right to dispose of the dual-use item **or cyber-surveillance technology** belongs to a person resident or established outside the Union pursuant to the contract on which the export is based, the exporter shall be considered to be the contracting party resident or established in the Union.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 23
Marietje Schaake

Proposal for a regulation
Article 2 – paragraph 4

Text proposed by the Commission

4. ‘export declaration’ shall mean the act whereby a person indicates in the prescribed form and manner the wish to export dual-use items specified in point 1 ;

Amendment

4. ‘export declaration’ shall mean the act whereby a person indicates in the prescribed form and manner the wish to export dual-use items **or cyber-surveillance technologies** specified in point 1 **and 2** ;

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 24
Marietje Schaake

Proposal for a regulation
Article 2 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. 'end-user' shall mean any natural or legal person or entity that is the final recipient and user of the exported dual-use items or cyber-surveillance technologies.

Or. en

Justification

Defining end-user as the actual final recipient and user of the item, should make sure that the information that exporters provide on end-users is specific and granular, allowing a proper

evaluation by authorities on whether or not a licence for export should be provided.

Amendment 25
Marietje Schaake

Proposal for a regulation
Article 2 – paragraph 6 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) the negotiation or arrangement of transactions for the purchase, sale or supply of dual-use items from a third country to any other third country, or

(a) the negotiation or arrangement of transactions for the purchase, sale or supply of dual-use items ***or cyber-surveillance technologies*** from a third country to any other third country, or

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 26
Marietje Schaake

Proposal for a regulation
Article 2 – paragraph 6 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the selling or buying of dual-use items that are located in third countries for their transfer to another third country.

(b) the selling or buying of dual-use items ***and cyber-surveillance technologies*** that are located in third countries for their transfer to another third country.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 27
Marietje Schaake

Proposal for a regulation
Article 2 – paragraph 10 – introductory part

Text proposed by the Commission

10. ‘transit’ shall mean a transport of non-Union dual-use items entering and passing through the customs territory of the Union with a destination outside the Union including items:

Amendment

10. ‘transit’ shall mean a transport of non-Union dual-use items *or cyber-surveillance technologies* entering and passing through the customs territory of the Union with a destination outside the Union including items:

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 28
Marietje Schaake

Proposal for a regulation
Article 2 – paragraph 11

Text proposed by the Commission

11. ‘individual export authorisation’ shall mean an authorisation granted to one specific exporter for one end user or consignee in a third country and covering one or more dual-use items;

Amendment

11. ‘individual export authorisation’ shall mean an authorisation granted to one specific exporter for one end user or consignee in a third country and covering one or more dual-use items *or cyber-surveillance technologies*;

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 29
Marietje Schaake

Proposal for a regulation
Article 2 – paragraph 12

Text proposed by the Commission

12. 'global export authorisation' shall mean an authorisation granted to one specific exporter in respect of a type or category of dual-use item which may be valid for exports to one or more specified end users in one or more specified third countries;

Amendment

12. 'global export authorisation' shall mean an authorisation granted to one specific exporter in respect of a type or category of dual-use item **or cyber-surveillance technology** which may be valid for exports to one or more specified end users in one or more specified third countries;

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 30
Marietje Schaake

Proposal for a regulation
Article 2 – paragraph 13

Text proposed by the Commission

13. 'large project authorisation' shall mean a global export authorisation granted to one specific exporter, in respect of a type or category of dual-use item which may be valid for exports to one or more specified end users in one or more specified third countries for the duration of a specified project the realisation of which exceeds one year;

Amendment

13. 'large project authorisation' shall mean a global export authorisation granted to one specific exporter, in respect of a type or category of dual-use item **or cyber-surveillance technology** which may be valid for exports to one or more specified end users in one or more specified third countries for the duration of a specified project the realisation of which exceeds one year;

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 31
Marietje Schaake

Proposal for a regulation
Article 2 – paragraph 15

Text proposed by the Commission

15. ‘Union general transfer authorisation’ shall mean an authorisation granted for transfers of certain dual-use items between Member States available to all operators who respect its conditions and requirements for use as listed in Section A of Annex IV;

Amendment

15. ‘Union general transfer authorisation’ shall mean an authorisation granted for transfers of certain dual-use items **or cyber-surveillance technologies** between Member States available to all operators who respect its conditions and requirements for use as listed in Section A of Annex IV;

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 32
Marietje Schaake

Proposal for a regulation
Article 2 – paragraph 21

Text proposed by the Commission

21. ***'cyber-surveillance technology' shall mean items specially designed to enable the covert intrusion into information and telecommunication systems with a view to monitoring, extracting, collecting and analysing data and/or incapacitating or damaging the targeted system. This includes items related to the following technology and equipment:***

- (a) mobile telecommunication interception equipment;***
- (b) intrusion software;***
- (c) monitoring centers;***
- (d) lawful interception systems and***

Amendment

deleted

data retention systems;

(e) *digital forensics;*

Or. en

Justification

Moved to article 2, point 2. Digital forensics are not covered by the control lists; items named in a), b) (Section A Annex I), c) and d) (Section B Annex I) are.

Amendment 33

Marietje Schaake

Proposal for a regulation

Article 3 – paragraph 1

Text proposed by the Commission

1. An authorisation shall be required for the export of the dual-use items listed in Annex I.

Amendment

1. An authorisation shall be required for the export of the dual-use items ***and cyber-surveillance technologies*** listed in Annex I.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 34

Marietje Schaake

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

2. Pursuant to Article 4 or Article 8, an authorisation may also be required for the export to all or certain destinations of certain dual-use items not listed in Annex I.

Amendment

2. Pursuant to Article 4 or Article 8, an authorisation may also be required for the export to all or certain destinations of certain dual-use items ***or cyber-surveillance technologies*** not listed in Annex I.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 35
Marietje Schaake

Proposal for a regulation
Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

1. An authorisation shall be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the competent authority that the items in question are or may be intended, in their entirety or in part:

Amendment

1. An authorisation shall be required for the export of dual-use items ***or cyber-surveillance technologies*** not listed in Annex I if the exporter has been informed by the competent authority that the items in question are or may be intended, in their entirety or in part:

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 36
Marietje Schaake

Proposal for a regulation
Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) for use by persons complicit in or responsible for directing or committing ***serious*** violations of human rights or international humanitarian law in ***situations of armed conflict or internal repression in the country of final destination, as identified by relevant public international institutions, or European*** or national competent authorities, and where there is evidence of the use of this or similar items for directing

Amendment

(d) for use by persons complicit in or responsible for directing or committing violations of ***international*** human rights ***law*** or international humanitarian law in ***countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe, the EU*** or national competent authorities, and where there is evidence of the use of this or similar items for directing or implementing such

or implementing such *serious* violations by the proposed end-user; violations by the proposed end-user;

Or. en

Justification

The use of cyber-surveillance technologies as such can constitute a direct interference with a number of specific human rights, including the right to privacy, the right to data protection, freedom of expression and the freedom of assembly and association. The results of the use of these tools are often a necessary element to identify or gather information about persons, which are subsequently subject to serious human rights violations including extrajudicial killings, torture or inhuman and degrading treatment, enforced disappearances, slavery and forced labour, rape or sexual abuse, arbitrary detentions. It is also necessary to clarify which bodies should provide the assessments of the human rights situation, as clarified for instance by Criterion 2 of Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment

Amendment 37 **Marietje Schaake**

Proposal for a regulation **Article 4 – paragraph 1 – point e**

Text proposed by the Commission

Amendment

(e) for use *in connection with acts of terrorism.*

(e) for use *by persons, groups and entities involved in terrorist acts and subject to restrictive measures as laid down in Common position 2001/931/CFSP*

Or. en

Justification

Necessary to provide more legal clarity, by linking point e) to an existing and established limited list of persons, groups and entities involved in terrorist acts.

Amendment 38 **Marietje Schaake**

Proposal for a regulation **Article 4 – paragraph new2**

Text proposed by the Commission

new2. If an exporter, under his obligation to exercise due diligence, is aware that dual-use items which he proposes to export, not listed in Annex I, are intended, in their entirety or in part, for any of the uses referred to in paragraph 1, he must notify the competent authority, which will decide whether or not it is expedient to make the export concerned subject to authorisation.

Amendment

new2. If an exporter, under his obligation to exercise due diligence, is aware that dual-use items **or cyber-surveillance technologies** which he proposes to export, not listed in Annex I, are intended, in their entirety or in part, for any of the uses referred to in paragraph 1, he must notify the competent authority, which will decide whether or not it is expedient to make the export concerned subject to authorisation.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 39
Marietje Schaake

Proposal for a regulation
Article 4 – paragraph 3

Text proposed by the Commission

3. Authorisations for the export of non-listed items shall be granted for specific items and end-users. The authorisations shall be granted by the competent authority of the Member State where the exporter is resident or established or, in case when the exporter is a person resident or established outside the Union, by the competent authority of the Member State where the items are located. The authorisations shall be valid throughout the Union. The authorisations shall be valid for **one year**, and may be renewed by the competent authority.

Amendment

3. Authorisations for the export of non-listed items shall be granted for specific items and end-users. The authorisations shall be granted by the competent authority of the Member State where the exporter is resident or established or, in case when the exporter is a person resident or established outside the Union, by the competent authority of the Member State where the items are located. The authorisations shall be valid throughout the Union. The authorisations shall be valid for **two years**, and may be renewed by the competent authority.

Or. en

Amendment 40
Marietje Schaake

Proposal for a regulation
Article 4 – paragraph new4 – subparagraph 1

Text proposed by the Commission

A Member State which imposes an authorisation requirement, in application of paragraphs 1 , 2 and 3 on the export of a dual-use item not listed in Annex I, shall immediately inform the other Member States and the Commission and provide them with the relevant information, in particular concerning the items and end-users concerned . The other Member States shall give all due consideration to this information and shall make known within 10 working days any objections they may have to the imposition of such an authorisation requirement. In exceptional cases, any Member State consulted may request an extension of the 10-day period. However, the extension may not exceed 30 working days.

Amendment

A Member State which imposes an authorisation requirement, in application of paragraphs 1 , 2 and 3 on the export of a dual-use item *or cyber-surveillance technology* not listed in Annex I, shall immediately inform the other Member States and the Commission and provide them with the relevant information, in particular concerning the items and end-users concerned . The other Member States shall give all due consideration to this information and shall make known within 10 working days any objections they may have to the imposition of such an authorisation requirement. In exceptional cases, any Member State consulted may request an extension of the 10-day period. However, the extension may not exceed 30 working days.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 41
Marietje Schaake

Proposal for a regulation
Article 4 – paragraph new4 – subparagraph 2

Text proposed by the Commission

If no objections are received, the Member States consulted shall be considered to have no objection and shall impose authorisations requirements for all

Amendment

If no objections are received, the Member States consulted shall be considered to have no objection and shall impose authorisations requirements for all

"essentially similar transactions". They shall inform their customs administration and other relevant national authorities about the authorisations requirements .

"essentially similar transactions". They shall inform their customs administration and other relevant national authorities about the authorisations requirements .
Further, if no objections are received, the Commission shall assess the necessity to adopt delegated acts adding items referred to in paragraphs 1, 2 and 3 to Annex I and Section B of Annex IV in line with the procedures provided for in article 16.

Or. en

Justification

If all Member States agree that a certain product requires a licence, it is logical that it should be considered to add this to the control list for permanent control. It should not be an obligation to add such an item to the list, since there may be instances in which the item should only be controlled for a certain end-use and/or end-user.

Amendment 42 **Marietje Schaake**

Proposal for a regulation **Article 4 – paragraph new4 – subparagraph 3**

Text proposed by the Commission

If objections are received from ***any consulted*** Member ***State***, the requirement for authorisation shall be revoked unless the Member State which imposes the authorisation requirement considers that an export might prejudice its essential security interests. In that case, that Member State may decide to maintain the authorisation requirement. This should be notified to the Commission and the other Member States without delay.

Amendment

If objections are received from ***at least four*** Member ***States representing at least 35% of the population of the Union***, the requirement for authorisation shall be revoked unless the Member State which imposes the authorisation requirement considers that an export might prejudice its essential security interests, ***or risk being used by persons complicit in or responsible for directing or committing violations of international human rights law or international humanitarian law in countries where serious human rights violations have been established***. In that case, that Member State may decide to maintain the authorisation requirement. This should be notified to the Commission and the other Member States without delay.

Justification

Member States must also be able to uphold their requirement for authorisation if they see a risk of human rights violations, not only in case of security concerns.

Amendment 43
Marietje Schaake

Proposal for a regulation
Article 4 – paragraph new5

Text proposed by the Commission

new5. The provisions of Article 15(1), (2) and (5) to (7) shall apply to cases concerning dual-use items not listed in Annex I.

Amendment

new5. The provisions of Article 15(1), (2) and (5) to (7) shall apply to cases concerning dual-use items ***or cyber-surveillance technologies*** not listed in Annex I.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 44
Marietje Schaake

Proposal for a regulation
Article 5 – paragraph 1

Text proposed by the Commission

1. An authorisation shall be required for brokering services of dual-use items if the broker has been informed by the competent authority that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in Article 4(1).

Amendment

1. An authorisation shall be required for brokering services of dual-use items ***or cyber-surveillance technologies*** if the broker has been informed by the competent authority that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in Article 4(1).

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 45
Marietje Schaake

Proposal for a regulation
Article 5 – paragraph 2

Text proposed by the Commission

2. If a broker is aware that the dual-use items for which he proposes brokering services are intended, in their entirety or in part, for any of the uses referred to in Article 4(1), he must notify the competent authority which will decide whether or not it is expedient to make such brokering services subject to authorisation.

Amendment

2. If a broker is aware that the dual-use items ***or cyber-surveillance technologies*** for which he proposes brokering services are intended, in their entirety or in part, for any of the uses referred to in Article 4(1), he must notify the competent authority which will decide whether or not it is expedient to make such brokering services subject to authorisation.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 46
Marietje Schaake

Proposal for a regulation
Article 6 – paragraph 1

Text proposed by the Commission

1. The transit of non-Union dual-use items may be prohibited at any time by the competent authority of the Member State where the items are situated if the items are or may be intended, in their entirety or in part, for uses referred to in Article 4(1).

Amendment

1. The transit of non-Union dual-use items ***or cyber-surveillance technologies*** may be prohibited at any time by the competent authority of the Member State where the items are situated if the items are or may be intended, in their entirety or in part, for uses referred to in Article 4(1).

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 47
Marietje Schaake

Proposal for a regulation
Article 6 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Before deciding whether or not to prohibit a transit the competent authority may impose in individual cases an authorisation requirement for the specific transit of dual-use items if the items are or may be intended, in their entirety or in part, for uses referred to in Article 4(1).

Amendment

Before deciding whether or not to prohibit a transit the competent authority may impose in individual cases an authorisation requirement for the specific transit of dual-use items ***or cyber-surveillance technologies*** if the items are or may be intended, in their entirety or in part, for uses referred to in Article 4(1).

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 48
Marietje Schaake

Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission

1. An authorisation shall be required for the provision, directly or indirectly, of technical assistance related to dual-use items, or related to the provision, manufacture, maintenance and use of dual-use items, if the supplier of technical assistance has been informed by the competent authority that the items in question are or may be intended, in their entirety or in part, for any of the uses

Amendment

1. An authorisation shall be required for the provision, directly or indirectly, of technical assistance related to dual-use items ***and cyber-surveillance technologies***, or related to the provision, manufacture, maintenance and use of dual-use items ***and cyber-surveillance technologies***, if the supplier of technical assistance has been informed by the competent authority that the items in question are or may be

referred to in Article 4.

intended, in their entirety or in part, for any of the uses referred to in Article 4.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 49
Marietje Schaake

Proposal for a regulation
Article 7 – paragraph 2 – subparagraph 1

Text proposed by the Commission

If a supplier of technical assistance is aware that the dual-use items for which he proposes to supply technical assistance are intended, in their entirety or in part, for any of the uses referred to in Article 4, he must notify the competent authority which will decide whether or not it is expedient to make such technical assistance subject to authorisation.

Amendment

If a supplier of technical assistance is aware that the dual-use items ***or cyber-surveillance technologies*** for which he proposes to supply technical assistance are intended, in their entirety or in part, for any of the uses referred to in Article 4, he must notify the competent authority which will decide whether or not it is expedient to make such technical assistance subject to authorisation.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 50
Marietje Schaake

Proposal for a regulation
Article 8 – paragraph 1

Text proposed by the Commission

1. A Member State may prohibit or impose an authorisation requirement on the export of dual-use items not listed in

Amendment

1. A Member State may prohibit or impose an authorisation requirement on the export of dual-use items ***or cyber-***

Annex I for reasons of public security or for human rights considerations.

surveillance technologies not listed in Annex I for reasons of public security or for human rights considerations.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 51
Marietje Schaake

Proposal for a regulation
Article 9 – paragraph 2 – introductory part

Text proposed by the Commission

2. A Member State may impose an authorisation requirement for the transfer of other dual-use items from its territory to another Member State in cases where at the time of transfer:

Amendment

2. A Member State may impose an authorisation requirement for the transfer of other dual-use items *or cyber-surveillance technologies* from its territory to another Member State in cases where at the time of transfer:

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 52
Marietje Schaake

Proposal for a regulation
Article 9 – paragraph 7

Text proposed by the Commission

7. The relevant commercial documents relating to intra-Union transfers of dual-use items listed in Annex I shall indicate clearly that those items are subject to controls if exported from the Union . Relevant commercial documents include,

Amendment

7. The relevant commercial documents relating to intra-Union transfers of dual-use items *or cyber-surveillance technologies* listed in Annex I shall indicate clearly that those items are subject to controls if exported from the Union .

in particular, any sales contract, order confirmation, invoice or dispatch note.

Relevant commercial documents include, in particular, any sales contract, order confirmation, invoice or dispatch note.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 53
Marietje Schaake

Proposal for a regulation
Article 10 – paragraph 3

Text proposed by the Commission

3. Individual export authorisations and global export authorisations shall be valid for **one year**, and may be renewed by the competent authority. Global export authorisations for large projects shall be valid for a duration to be determined by the competent authority.

Amendment

3. Individual export authorisations and global export authorisations shall be valid for **two years**, and may be renewed by the competent authority. Global export authorisations for large projects shall be valid for a duration to be determined by the competent authority.

Or. en

Amendment 54
Marietje Schaake

Proposal for a regulation
Article 10 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Exporters shall supply the competent authority with all relevant information required for their applications for individual and global export authorisation so as to provide complete information in particular on the end user, the country of destination and the end use of the item exported.

Amendment

Exporters shall supply the competent authority with all relevant information required for their applications for individual and global export authorisation so as to provide complete information in particular on the end user, the country of destination and the end use of the item exported. ***When dealing with governmental end-users, the information supplied shall define specifically which***

department, agency, unit or sub-unit will be the final end-user of the item exported.

Or. en

Justification

Necessary to ensure that it is clear specifically who or what entity is the end-user of a product, to the most detailed level possible.

Amendment 55
Marietje Schaake

Proposal for a regulation
Article 10 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Authorisations *may* be subject, *if appropriate*, to an end-use statement.

Amendment

Authorisations *for cyber-surveillance technology shall* be subject *to an end-use statement. Authorisations for other items may be subject* to an end-use statement *if appropriate*.

Or. en

Justification

Necessary because cyber-surveillance technologies are a new category of products and sensitive, when it comes to human rights. This amendment is inextricably linked to other admissible amendments.

Amendment 56
Marietje Schaake

Proposal for a regulation
Article 10 – paragraph 4 – subparagraph 3 – subparagraph 1 – point a

Text proposed by the Commission

(a) the description of the dual-use items, including the relevant control entry from Section A of Annex I;

Amendment

(a) the description of the dual-use items *or cyber-surveillance technologies*, including the relevant control entry from Section A of Annex I;

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 57
Marietje Schaake

Proposal for a regulation
Article 10 – paragraph 4 – subparagraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the quantity and the value of the dual-use items;

(b) the quantity and the value of the dual-use items ***or cyber-surveillance technologies***;

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 58
Marietje Schaake

Proposal for a regulation
Article 10 – paragraph 4 – subparagraph 3 – subparagraph 1 – point d

Text proposed by the Commission

Amendment

(d) where known, the end-use and end-user of the dual-use items.

(d) where known, the end-use and end-user of the dual-use items ***or cyber-surveillance technologies***.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 59
Marietje Schaake

Proposal for a regulation
Article 11 – paragraph 3

Text proposed by the Commission

3. Brokers and suppliers of technical assistance shall supply the competent authority with all relevant information required for their application for authorisation under this Regulation , in particular details of the location of the dual-use items , a clear description of the items and the quantity involved, third parties involved in the transaction, the third country of destination, the end-user in that country and its exact location.

Amendment

3. Brokers and suppliers of technical assistance shall supply the competent authority with all relevant information required for their application for authorisation under this Regulation , in particular details of the location of the dual-use items **or cyber-surveillance technologies**, a clear description of the items and the quantity involved, third parties involved in the transaction, the third country of destination, the end-user in that country and its exact location.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 60
Marietje Schaake

Proposal for a regulation
Article 13 – paragraph 1 – subparagraph 1

Text proposed by the Commission

If the dual-use items in respect of which an application has been made for an individual export authorisation to a destination not listed in Section A of 1 Annex II or to any destination in the case of dual-use items listed in Section B of Annex IV are or will be located in one or more Member States other than the one where the application has been made, that fact shall be indicated in the application. The competent authority of the Member State to which the application for authorisation has been made shall immediately consult the competent

Amendment

If the dual-use items **or cyber-surveillance technologies** in respect of which an application has been made for an individual export authorisation to a destination not listed in Section A of 1 Annex II or to any destination in the case of dual-use items listed in Section B of Annex IV are or will be located in one or more Member States other than the one where the application has been made, that fact shall be indicated in the application. The competent authority of the Member State to which the application for authorisation has been made shall

authorities of the Member State or States in question and provide the relevant information. The Member State or States consulted shall make known within 10 working days any objections it or they may have to the granting of such an authorisation, which shall bind the Member State in which the application has been made.

immediately consult the competent authorities of the Member State or States in question and provide the relevant information. The Member State or States consulted shall make known within 10 working days any objections it or they may have to the granting of such an authorisation, which shall bind the Member State in which the application has been made.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 61
Marietje Schaake

Proposal for a regulation
Article 14 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(e a) The behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law;

Or. en

Justification

Necessary to ensure coherence with Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment.

Amendment 62
Marietje Schaake

Proposal for a regulation
Article 14 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(f) considerations about intended end use and the risk of diversion , including existence of a risk that the dual-use items will be diverted or re-exported under undesirable conditions .

(f) considerations about intended end use and the risk of diversion , including existence of a risk that the dual-use items ***or cyber-surveillance technologies*** will be diverted or re-exported under undesirable conditions .

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 63
Marietje Schaake

Proposal for a regulation
Article 14 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(f a) The compatibility of the exports of the items with the technical and economic capacity of the recipient country;

Or. en

Justification

Necessary to ensure coherence with Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment.

Amendment 64
Marietje Schaake

Proposal for a regulation
Article 14 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. In deciding whether or not to grant an individual or global export

authorisation or to grant an authorisation for brokering services or technical assistance for cyber-surveillance technologies, the competent authorities of the Member States shall in particular consider the risk of violation of the right to privacy, the right to data protection, freedom of speech and freedom of assembly and association, as well as the strength of the rule of law and the legal framework for use of the items to be exported and the potential security risks for the Union.

Or. en

Justification

Necessary to indicate the specific and sensitive nature of cyber-surveillance technologies, with regard to human rights and the security of the Union and the Member States.

Amendment 65
Marietje Schaake

Proposal for a regulation
Article 14 – paragraph 2

Text proposed by the Commission

2. The Commission and the Council shall make available ***guidance and/or recommendations*** to ensure common risk assessments by the competent authorities of the Member States for the implementation of those criteria.

Amendment

2. The Commission and the Council shall make available ***guidelines*** to ensure common risk assessments by the competent authorities of the Member States for the implementation of those criteria ***when this Regulation enters into force.***

Or. en

Justification

Necessary because guidelines are crucial interpretative tools for stakeholders and national authorities.

Amendment 66
Marietje Schaake

Proposal for a regulation
Article 15 – paragraph 3

Text proposed by the Commission

3. The competent authorities of the Member States shall notify the Member States and the Commission of their decisions to prohibit a transit of dual-use items taken under Article 6 without delay. These notifications will contain all relevant information including the classification of the item, its technical parameters, the country of destination and the end user.

Amendment

3. The competent authorities of the Member States shall notify the Member States and the Commission of their decisions to prohibit a transit of dual-use items **or cyber-surveillance technologies** taken under Article 6 without delay. These notifications will contain all relevant information including the classification of the item, its technical parameters, the country of destination and the end user.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 67
Marietje Schaake

Proposal for a regulation
Article 15 – paragraph 5

Text proposed by the Commission

5. Before the competent authority of a Member State, acting under this Regulation, grants an authorisation for export or brokering services or technical assistance, or decides on a transit, it shall examine all valid denials or decisions to prohibit a transit of dual-use items listed in Annex I taken under this Regulation to ascertain whether an authorisation or a transit has been denied by the competent authorities of another Member State or States for an essentially identical transaction (meaning an item with essentially identical parameters or technical characteristics to the same end

Amendment

5. Before the competent authority of a Member State, acting under this Regulation, grants an authorisation for export or brokering services or technical assistance, or decides on a transit, it shall examine all valid denials or decisions to prohibit a transit of dual-use items **or cyber-surveillance technologies** listed in Annex I taken under this Regulation to ascertain whether an authorisation or a transit has been denied by the competent authorities of another Member State or States for an essentially identical transaction (meaning an item with essentially identical parameters or

user or consignee). It shall first consult the competent authorities of the Member State or States which issued such denial(s) or decisions to prohibit the transit as provided for in paragraphs 1 and 3. If following such consultation the competent authority of the Member State decides to grant an authorisation or allow the transit, it shall notify the competent authorities of the other Member States and the Commission, providing all relevant information to explain the decision.

technical characteristics to the same end user or consignee). It shall first consult the competent authorities of the Member State or States which issued such denial(s) or decisions to prohibit the transit as provided for in paragraphs 1 and 3. If following such consultation the competent authority of the Member State decides to grant an authorisation or allow the transit, it shall notify the competent authorities of the other Member States and the Commission, providing all relevant information to explain the decision.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 68
Marietje Schaake

Proposal for a regulation
Chapter 4 – title

Text proposed by the Commission

AMENDMENT OF LISTS OF DUAL-
USE ITEMS AND DESTINATIONS

Amendment

AMENDMENT OF LISTS OF DUAL-
USE ITEMS AND **CYBER-
SURVEILLANCE TECHNOLOGIES**
AND DESTINATIONS

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 69
Marietje Schaake

Proposal for a regulation
Article 16 – paragraph 2 – introductory part

Text proposed by the Commission

2. The Commission shall be empowered to adopt delegated acts in order to amend the lists of dual-use items set out in Annex I and Section B of Annex IV, as follows:

Amendment

2. The Commission shall be empowered to adopt delegated acts in order to amend the lists of dual-use items **and cyber-surveillance technologies** set out in Annex I and Section B of Annex IV, as follows:

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 70
Marietje Schaake

Proposal for a regulation
Article 16 – paragraph 2 – point new (a)

Text proposed by the Commission

new (a) The list of dual-use items set out in Section A of Annex I shall be amended in conformity with the relevant obligations and commitments, and any modification thereof, that Member States and the Union have accepted as members of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties. Where the amendment of Section A of Annex I concerns dual-use items which are also listed in Annexes II and IV, Section B, those Annexes shall be amended accordingly.

Amendment

new (a) The list of dual-use items **and cyber-surveillance technologies** set out in Section A of Annex I shall be amended in conformity with the relevant obligations and commitments, and any modification thereof, that Member States and the Union have accepted as members of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties. Where the amendment of Section A of Annex I concerns dual-use items which are also listed in Annexes II and IV, Section B, those Annexes shall be amended accordingly.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 71
Marietje Schaake

Proposal for a regulation
Article 16 – paragraph 2 – point b

Text proposed by the Commission

(b) The list of *dual-use items* set out in Section B of Annex I may be amended if this is necessary due to risks that the export of such items may pose as regards the commission of serious violations of human rights or international humanitarian law or the essential security interests of the Union and its Member States.

Amendment

(b) The list of *cyber-surveillance technologies* set out in Section B of Annex I may be amended if this is necessary due to risks that the export of such items may pose as regards the commission of serious violations of human rights or international humanitarian law or the essential security interests of the Union and its Member States. *Where imperative grounds of urgency require an amendment of Section B of Annex I, the procedure provided for in Article 17 shall apply to delegated acts adopted pursuant to this point.*

Or. en

Justification

Necessary given the rapid changes in existing technology and the potential that new technologies arise that need to be added to the Section B of Annex I without delay.

Amendment 72
Marietje Schaake

Proposal for a regulation
Article 16 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Section B of Annex I shall be limited in scope to cyber-surveillance technologies and shall not contain duplications of items listed in Section A of Annex I;

Or. en

Justification

Necessary to ensure coherence of the control lists and to ensure that the EU's unilateral controls are limited to what is necessary and proportionate.

Amendment 73 **Marietje Schaake**

Proposal for a regulation **Article 18 – paragraph 1**

Text proposed by the Commission

1. When completing the formalities for the export of dual-use items at the customs office responsible for handling the export declaration, the exporter shall furnish proof that any necessary export authorisation has been obtained.

Amendment

1. When completing the formalities for the export of dual-use items ***or cyber-surveillance technologies*** at the customs office responsible for handling the export declaration, the exporter shall furnish proof that any necessary export authorisation has been obtained.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 74 **Marietje Schaake**

Proposal for a regulation **Article 18 – paragraph 3 – introductory part**

Text proposed by the Commission

3. Without prejudice to any powers conferred on it under, and pursuant to, the Union Customs Code, a Member State may also, for a period not exceeding the periods referred to in paragraph 4, suspend the process of export from its territory, or, if necessary, otherwise prevent the dual-use items listed in Annex I which are covered by a valid export authorisation from leaving the Union via its territory, where it

Amendment

3. Without prejudice to any powers conferred on it under, and pursuant to, the Union Customs Code, a Member State may also, for a period not exceeding the periods referred to in paragraph 4, suspend the process of export from its territory, or, if necessary, otherwise prevent the dual-use items ***or cyber-surveillance technologies*** listed in Annex I which are covered by a valid export authorisation from leaving the

has grounds for suspicion that:

Union via its territory, where it has grounds for suspicion that:

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 75
Marietje Schaake

Proposal for a regulation
Article 18 – paragraph 4

Text proposed by the Commission

4. In the case referred to in paragraph 3, the competent authority of the Member State which granted the export authorisation shall be consulted forthwith in order that they may take action pursuant to Article 15(1). If such competent authority decides to maintain the authorisation, it shall reply within 10 working days, which, at its request, may be extended to 30 working days in exceptional circumstances. In such case, or if no reply is received within 10 or 30 days, as the case may be, the dual-use items shall be released immediately. The competent authority of the Member State which granted the authorisation shall inform the competent authorities of the other Member States and the Commission.

Amendment

4. In the case referred to in paragraph 3, the competent authority of the Member State which granted the export authorisation shall be consulted forthwith in order that they may take action pursuant to Article 15(1). If such competent authority decides to maintain the authorisation, it shall reply within 10 working days, which, at its request, may be extended to 30 working days in exceptional circumstances. In such case, or if no reply is received within 10 or 30 days, as the case may be, the dual-use items ***or cyber-surveillance technologies*** shall be released immediately. The competent authority of the Member State which granted the authorisation shall inform the competent authorities of the other Member States and the Commission.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 76
Marietje Schaake

Proposal for a regulation
Article 18 – paragraph 5

Text proposed by the Commission

5. The Commission, in cooperation with the Member States, shall develop **a guidance** to support interagency cooperation between licensing and customs authorities.

Amendment

5. The Commission, in cooperation with the Member States, shall develop **guidelines** to support interagency cooperation between licensing and customs authorities.

Or. en

Amendment 77
Marietje Schaake

Proposal for a regulation
Article 19 – paragraph 1

Text proposed by the Commission

1. Member States may provide that customs formalities for the export of dual-use items may be completed only at customs offices empowered to that end.

Amendment

1. Member States may provide that customs formalities for the export of dual-use items **or cyber-surveillance technologies** may be completed only at customs offices empowered to that end.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 78
Marietje Schaake

Proposal for a regulation
Article 20 – paragraph 1 – subparagraph 1 – point new (a – indent 1

Text proposed by the Commission

- grant export authorisations for dual-use items;

Amendment

- grant export authorisations for dual-use items **and cyber-surveillance technologies**;

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 79
Marietje Schaake

Proposal for a regulation
Article 20 – paragraph 1 – subparagraph 1 – point new (a – indent 3

Text proposed by the Commission

- decide to prohibit the transit of non-Union dual-use items under this Regulation;

Amendment

- decide to prohibit the transit of non-Union dual-use items **and cyber-surveillance technologies** under this Regulation;

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 80
Marietje Schaake

Proposal for a regulation
Article 20 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

(a) information regarding the application of controls, including licensing data (number, value and types of licences and related destinations, number of users of general and global authorisations, number of operators with ICPs, processing times, volume and value of trade subject to intra-EU transfers etc), and, where available, data on exports of dual-use items carried out in other Member States;

Amendment

(a) **all** information regarding the application of controls, including licensing data (number, value and types of licences and related destinations, number of users of general and global authorisations, number of operators with ICPs, processing times, volume and value of trade subject to intra-EU transfers etc), and, where available, data on exports of dual-use items **and cyber-surveillance technologies** carried out in other Member States;

Or. en

Amendment 81
Marietje Schaake

Proposal for a regulation
Article 20 – paragraph 2 – subparagraph 2 – point b

Text proposed by the Commission

(b) information regarding the enforcement of controls, including details of exporters deprived of the right to use the national or Union general export authorisations 1 , reports of violations, seizures and the application of other penalties ;

Amendment

(b) **all** information regarding the enforcement of controls, including details of exporters deprived of the right to use the national or Union general export authorisations 1 , **any** reports of violations, seizures and the application of other penalties ;

Or. en

Amendment 82
Marietje Schaake

Proposal for a regulation
Article 20 – paragraph 2 – subparagraph 2 – point c

Text proposed by the Commission

(c) data on sensitive end users, actors involved in suspicious procurement activities, and, where available, routes taken.

Amendment

(c) **all** data on sensitive end users, actors involved in suspicious procurement activities, and, where available, routes taken.

Or. en

Amendment 83
Marietje Schaake

Proposal for a regulation
Article 22 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. The Commission shall assess whether rules on penalties laid down by Member States are of a similar nature and effect.

Or. en

Justification

Necessary to analyse and encourage coherence between Member State rules on penalties. This amendment is inextricably linked to admissible amendments in recital 27.

Amendment 84 **Marietje Schaake**

Proposal for a regulation **Article 24 – paragraph 1**

Text proposed by the Commission

1. The Commission and the Council shall, where appropriate, make available ***guidance and/or recommendations*** for best practices for the subjects referred to in this Regulation to ensure the efficiency of the Union export control regime and the consistency of its implementation. The competent authorities of the Member States shall also, where appropriate, provide complementary guidance for exporters, brokers and transit operators resident or established in that Member State.

Amendment

1. The Commission and the Council shall, where appropriate, make available ***guidelines*** for best practices for the subjects referred to in this Regulation to ensure the efficiency of the Union export control regime and the consistency of its implementation. The competent authorities of the Member States shall also, where appropriate, provide complementary guidance for exporters, brokers and transit operators resident or established in that Member State.

Or. en

Amendment 85 **Marietje Schaake**

Proposal for a regulation **Article 24 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1 a. Member states shall make publicly available every month an easily searchable digital overview of licensing data based on common fields, which include:

(a) date;

(b) type of licence;

(c) product category;

- (d) *product description;*
- (e) *end use;*
- (f) *destination country;*
- (g) *end user;*
- (h) *value;*
- (i) *volume;*
- (j) *granted/denied.*

Or. en

Justification

Necessary to ensure transparency and scrutiny. This amendment is inextricably linked to the addition of new recital 23.

Amendment 86
Marietje Schaake

Proposal for a regulation
Article 25 – paragraph 1 – introductory part

Text proposed by the Commission

1. Exporters of dual-use items shall keep detailed registers or records of their exports, in accordance with the national law or practice in force in the respective Member States. Such registers or records shall include in particular commercial documents such as invoices, manifests and transport and other dispatch documents containing sufficient information to allow the following to be identified:

Amendment

1. Exporters of dual-use items ***and cyber-surveillance technologies*** shall keep detailed registers or records of their exports, in accordance with the national law or practice in force in the respective Member States. Such registers or records shall include in particular commercial documents such as invoices, manifests and transport and other dispatch documents containing sufficient information to allow the following to be identified:

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 87
Marietje Schaake

Proposal for a regulation
Article 25 – paragraph 1 – point a

Text proposed by the Commission

(a) the description of the dual-use items;

Amendment

(a) the description of the dual-use items ***or cyber-surveillance technologies***;

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 88
Marietje Schaake

Proposal for a regulation
Article 25 – paragraph 1 – point b

Text proposed by the Commission

(b) the quantity of the dual-use items;

Amendment

(b) the quantity of the dual-use items ***or cyber-surveillance technologies***;

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 89
Marietje Schaake

Proposal for a regulation
Article 25 – paragraph 1 – point d

Text proposed by the Commission

(d) where known, the end-use and end-user of the dual-use items.

Amendment

(d) where known, the end-use and end-user of the dual-use items ***or cyber-surveillance technologies***.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 90
Marietje Schaake

Proposal for a regulation
Article 25 – paragraph 2

Text proposed by the Commission

2. In accordance with national law or practice in force in the respective Member States, brokers and suppliers of technical assistance shall keep registers or records for brokering or technical assistance services so as to be able to prove, on request, the description of the dual-use items that were the subject of brokering or technical assistance services, the period during which the items were the subject of such services and their destination, and the countries concerned by those services.

Amendment

2. In accordance with national law or practice in force in the respective Member States, brokers and suppliers of technical assistance shall keep registers or records for brokering or technical assistance services so as to be able to prove, on request, the description of the dual-use items ***or cyber-surveillance technologies*** that were the subject of brokering or technical assistance services, the period during which the items were the subject of such services and their destination, and the countries concerned by those services.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 91
Marietje Schaake

Proposal for a regulation
Article 25 – paragraph 3

Text proposed by the Commission

3. The registers or records and the documents referred to in paragraphs 1 and 2 shall be kept for at least ***three*** years from the end of the calendar year in which the export took place or the brokering or

Amendment

3. The registers or records and the documents referred to in paragraphs 1 and 2 shall be kept for at least ***five*** years from the end of the calendar year in which the export took place or the brokering or

technical assistance services were provided. They shall be produced, on request, to the competent authority .

technical assistance services were provided. They shall be produced, on request, to the competent authority .

Or. en

Amendment 92
Marietje Schaake

Proposal for a regulation
Article 25 – paragraph 4

Text proposed by the Commission

4. Documents and records of intra-Union transfers of dual-use items listed in Annex I shall be kept for at least three years from the end of the calendar year in which a transfer took place and shall be produced to the competent authority of the Member State from which these items were transferred on request.

Amendment

4. Documents and records of intra-Union transfers of dual-use items ***or cyber-surveillance technologies*** listed in Annex I shall be kept for at least three years from the end of the calendar year in which a transfer took place and shall be produced to the competent authority of the Member State from which these items were transferred on request.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 93
Marietje Schaake

Proposal for a regulation
Article 26 – paragraph 1 – point a

Text proposed by the Commission

(a) to gather information on any order or transaction involving dual-use items;

Amendment

(a) to gather information on any order or transaction involving dual-use items ***or cyber-surveillance technologies***;

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 94
Marietje Schaake

Proposal for a regulation
Article 27 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

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 ***or cyber-surveillance technologies*** covered by this Regulation and in particular:

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments.

Amendment 95
Marietje Schaake

Proposal for a regulation
Annex I – part A – paragraph 354

Text proposed by the Commission

4A005 Systems, equipment, and components therefor, specially designed or modified for the generation, operation or delivery of, ***or communication with,*** "intrusion software".

Amendment

4A005 Systems, equipment, and components therefor, specially designed or modified for the generation, operation or delivery of, "intrusion software".

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments. This

amendment is central to the definition of cyber-surveillance technology in article 2.2a, and recital 6a, which aim to prevent unwanted negative side effects to commercial and non-commercial information security research.

Amendment 96
Marietje Schaake

Proposal for a regulation
Annex I – part A – paragraph 364

Text proposed by the Commission

4D004 "Software" specially designed or modified for the generation, operation or delivery of, **or communication with**, "intrusion software".

Amendment

4D004 "Software" specially designed or modified for the generation, operation or delivery of "intrusion software".

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments. This amendment is central to the definition of cyber-surveillance technology in article 2.2a, and recital 6a, which aim to prevent unwanted negative side effects to commercial and non-commercial information security research.

Amendment 97
Marietje Schaake

Proposal for a regulation
Annex I – part A – point a

Text proposed by the Commission

a. "Technology" according to the General Technology Note, for the "development", "production" or "use" of equipment or "software" specified in 4A or 4D.

Amendment

a. "Technology" according to the General Technology Note, **specifically designed or modified** for the "development", "production" or "use" of equipment or "software" specified in 4A or 4D.

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments. This amendment is central to the definition of cyber-surveillance technology in article 2.2a, and recital 6a, which aim to prevent unwanted negative side effects to commercial and non-commercial information security research.

Amendment 98 **Marietje Schaake**

Proposal for a regulation **Annex I – part A – point c – paragraph 1**

Text proposed by the Commission

"Technology" for the "development" of "intrusion software".

Amendment

"Technology" ***specifically designed or modified*** for the "development" of "intrusion software".

Or. en

Justification

Necessary because the amendment is inextricably linked to other admissible amendments. This amendment is central to the definition of cyber-surveillance technology in article 2.2a, and recital 6a, which aim to prevent unwanted negative side effects to commercial and non-commercial information security research.

Amendment 99 **Marietje Schaake**

Proposal for a regulation **Annex I – part A – point a – paragraph 2 – point 1**

Text proposed by the Commission

1. Designed or modified to use "cryptography" employing digital techniques performing any cryptographic function other than authentication, digital signature or the execution of copy-protected "software", and having any of the following:

Technical Notes:

Amendment

deleted

- 1. Functions for authentication, digital signature and the execution of copy-protected "software" include their associated key management function.**
- 2. Authentication includes all aspects of access control where there is no encryption of files or text except as directly related to the protection of passwords, Personal Identification Numbers (PINs) or similar data to prevent unauthorised access.**

a.

A "symmetric algorithm" employing a key length in excess of 56 bits; or

Technical Note:

In Category 5 - Part 2, parity bits are not included in the key length.

b. An "asymmetric algorithm" where the security of the algorithm is based on any of the following:

1. Factorisation of integers in excess of 512 bits (e.g., RSA);

2. Computation of discrete logarithms in a multiplicative group of a finite field of size greater than 512 bits (e.g., Diffie-Hellman over Z/pZ); or

3. Discrete logarithms in a group other than mentioned in 5A002.a.1.b.2. in excess of 112 bits (e.g., Diffie-Hellman over an elliptic curve);

Or. en

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection; it constitutes an impediment to create and maintain secure systems and it constitutes an impediment to the consistent implementation of the GDPR . Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 7a, this amendment is necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the text.

Amendment 100
Marietje Schaake

Proposal for a regulation
Annex I – part A – point a – paragraph 2 – point 2

Text proposed by the Commission

Amendment

2. Designed or modified to perform 'cryptanalytic functions'; **deleted**

Note: 5A002.a.2. includes systems or equipment, designed or modified to perform 'cryptanalytic functions' by means of reverse engineering.

Technical Note:

'Cryptanalytic functions' are functions designed to defeat cryptographic mechanisms in order to derive confidential variables or sensitive data, including clear text, passwords or cryptographic keys.

Or. en

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection; it constitutes an impediment to create and maintain secure systems and it constitutes an impediment to the consistent implementation of the GDPR . Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 7a, this amendment is necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the text.

Amendment 101
Marietje Schaake

Proposal for a regulation
Annex I – part A – point a – paragraph 2 – point 5

Text proposed by the Commission

Amendment

5. Designed or modified to use cryptographic techniques to generate the spreading code for "spread spectrum" **deleted**

systems, other than those specified in 5A002.a.6., including the hopping code for "frequency hopping" systems;

Or. en

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection; it constitutes an impediment to create and maintain secure systems and it constitutes an impediment to the consistent implementation of the GDPR . Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 7a, this amendment is necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the text.

Amendment 102
Marietje Schaake

Proposal for a regulation
Annex I – part A – point a – paragraph 2 – point 6

Text proposed by the Commission

Amendment

- 6. *Designed or modified to use cryptographic techniques to generate channelising codes, scrambling codes or network identification codes, for systems using ultra-wideband modulation techniques and having any of the following:*** ***deleted***
- a. *A bandwidth exceeding 500 MHz;***
or
- b. *A "fractional bandwidth" of 20 % or more;***

Or. en

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection; it constitutes an impediment to create and maintain secure systems and it constitutes an impediment to the consistent implementation of the GDPR . Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 7a, this amendment is necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the

text.

Amendment 103
Marietje Schaake

Proposal for a regulation
Annex I – part A – point a – paragraph 2 – point 9

Text proposed by the Commission

Amendment

9. Designed or modified to use or perform "quantum cryptography". **deleted**

Technical Note:

"Quantum cryptography" is also known as Quantum Key Distribution (QKD).

Or. en

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection; it constitutes an impediment to create and maintain secure systems and it constitutes an impediment to the consistent implementation of the GDPR . Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 7a, this amendment is necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the text.

Amendment 104
Marietje Schaake

Proposal for a regulation
Annex I – part A – point b – paragraph 1

Text proposed by the Commission

Amendment

Systems, equipment, and components, designed or modified to enable, by means of "cryptographic activation" an item to achieve or exceed the controlled performance levels for functionality specified by 5A002.a. that would not otherwise be enabled. **deleted**

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection; it constitutes an impediment to create and maintain secure systems and it constitutes an impediment to the consistent implementation of the GDPR . Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 7a, this amendment is necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the text.

Amendment 105
Marietje Schaake

Proposal for a regulation
Annex I – part A – paragraph 390

Text proposed by the Commission

Amendment

**5B002 "Information security" test,
inspection and "production" equipment,
as follows:**

deleted

Or. en

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection; it constitutes an impediment to create and maintain secure systems and it constitutes an impediment to the consistent implementation of the GDPR . Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 7a, this amendment is necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the text.

Amendment 106
Marietje Schaake

Proposal for a regulation
Annex I – part A – point a

Text proposed by the Commission

Amendment

a. *Equipment specially designed for the "development" or "production" of equipment specified in 5A002 or 5B002.b.;* ***deleted***

Or. en

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection; it constitutes an impediment to create and maintain secure systems and it constitutes an impediment to the consistent implementation of the GDPR . Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 7a, this amendment is necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the text.

Amendment 107
Marietje Schaake

Proposal for a regulation
Annex I – part A – point b – paragraph 1

Text proposed by the Commission

Amendment

Measuring equipment specially designed to evaluate and validate the "information security" functions of the equipment specified in 5A002 or "software" specified in 5D002.a. or 5D002.c. ***deleted***

Or. en

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection and it constitutes an impediment to create and maintain secure systems. Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 5, this amendment is necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the text.

Amendment 108
Marietje Schaake

Proposal for a regulation
Annex I – part A – paragraph 391

Text proposed by the Commission

Amendment

5D002 "Software" as follows:

deleted

Or. en

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection; it constitutes an impediment to create and maintain secure systems and it constitutes an impediment to the consistent implementation of the GDPR . Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 7a, this amendment is necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the text.

Amendment 109
Marietje Schaake

Proposal for a regulation
Annex I – part A – point a

Text proposed by the Commission

Amendment

a. "Software" specially designed or modified for the "development", "production" or "use" of equipment specified in 5A002 or "software" specified in 5D002.c.;

deleted

Or. en

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection and it constitutes an impediment to create and maintain secure systems. Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 5, this amendment is necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the text.

Amendment 110
Marietje Schaaake

Proposal for a regulation
Annex I – part A – point b

Text proposed by the Commission

Amendment

b. "Software" specially designed or modified to support "technology" specified in 5E002; **deleted**

Or. en

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection; it constitutes an impediment to create and maintain secure systems and it constitutes an impediment to the consistent implementation of the GDPR . Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 7a, this amendment is necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the text.

Amendment 111
Marietje Schaaake

Proposal for a regulation
Annex I – part A – point c

Text proposed by the Commission

Amendment

c. Specific "software", as follows: **deleted**

1. "Software" having the characteristics, or performing or simulating the functions of the equipment, specified in 5A002;

2.

"Software" to certify "software" specified in 5D002.c.1.

Note: 5D002.c. does not control "software" limited to the tasks of "OAM" implementing only published or

commercial cryptographic standards.

Or. en

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection; it constitutes an impediment to create and maintain secure systems and it constitutes an impediment to the consistent implementation of the GDPR . Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 7a, this amendment is necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the text.

Amendment 112
Marietje Schaake

Proposal for a regulation
Annex I – part A – point d

Text proposed by the Commission

Amendment

d. "Software" designed or modified to enable, by means of "cryptographic activation", an item to achieve or exceed the controlled performance levels for functionality specified by 5A002.a. that would not otherwise be enabled.

deleted

5E2 Technology

Or. en

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection; it constitutes an impediment to create and maintain secure systems and it constitutes an impediment to the consistent implementation of the GDPR . Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 7a, this amendment is necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the text.

Amendment 113
Marietje Schaake

Proposal for a regulation
Annex I – part A – paragraph 392

Text proposed by the Commission

Amendment

5E002 "Technology" as follows:

deleted

Or. en

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection; it constitutes an impediment to create and maintain secure systems and it constitutes an impediment to the consistent implementation of the GDPR . Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 7a, this amendment is necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the text.

Amendment 114
Marietje Schaake

Proposal for a regulation
Annex I – part A – point a

Text proposed by the Commission

Amendment

a. "Technology" according to the General Technology Note for the "development", "production" or "use" of equipment specified in 5A002, 5B002 or "software" specified in 5D002.a. or 5D002.c.

deleted

Or. en

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection; it constitutes an impediment to create and maintain secure systems and it constitutes an impediment to the consistent implementation of the GDPR . Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 7a, this amendment is necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the text.

Amendment 115
Marietje Schaake

Proposal for a regulation
Annex I – part A – point b – paragraph 1

Text proposed by the Commission

Amendment

"Technology" to enable, by means of "cryptographic activation", an item to achieve or exceed the controlled performance levels for functionality specified by 5A002.a. that would not otherwise be enabled.

deleted

Or. en

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection; it constitutes an impediment to create and maintain secure systems and it constitutes an impediment to the consistent implementation of the GDPR . Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 7a, this amendment is necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the text.

Amendment 116
Marietje Schaake

Proposal for a regulation
Annex I – part B – title

Text proposed by the Commission

Amendment

B. LIST OF OTHER DUAL-USE ITEMS

B. LIST OF CYBER-SURVEILLANCE TECHNOLOGIES

Or. en

Justification

Necessary because it is inextricably linked to other admissible amendments and essential for the internal logic of the text.

Amendment 117
Marietje Schaake

Proposal for a regulation
Annex I – part B – paragraph 4 a (new)

Text proposed by the Commission

Amendment

f) network and security research for the purposes of authorised testing or the protection of information security systems

Or. en

Justification

Necessary because it is inextricably linked to other admissible amendments, including new recital 6a and essential for the internal logic of the text. This wording is in line with article 6.2 of the Budapest Convention and recital 17 of Directive 2013/40/EU

Amendment 118
Marietje Schaake

Proposal for a regulation
Annex II – part I

Text proposed by the Commission

Amendment

I. [...]

deleted

Or. en

Justification

The original intent of encryption control runs counter to the protection of the right to privacy and the right to data protection; it constitutes an impediment to create and maintain secure systems and it constitutes an impediment to the consistent implementation of the GDPR . Furthermore, cryptographic software available in the public domain is equivalent to those controlled by the Annex. Given the changes in recital 7a, and the deletion of the items in section A of Annex 1, which are covered by this GEA, there is no need to maintain this GEA EU009. This amendment is necessary because it is essential for the internal logic of the text.

Tabled separately

AM 119 Annex 1. Section A

DEFINITIONS OF TERMS USED IN THIS ANNEX

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>"Intrusion software" (4) means "software" specially designed or modified to avoid detection by 'monitoring tools', or to defeat 'protective countermeasures', of a computer or network-capable device, and performing any of the following:</p> <p>a. The extraction of data or information, from a computer or network-capable device, or the modification of system or user data; <i>or</i></p> <p>b. The modification of the standard execution path of a program or process in order to allow the execution of externally provided instructions.</p> <p><i>Notes:</i></p> <p>1. "Intrusion software" does not include any of the following:</p> <p>a. Hypervisors, debuggers or Software Reverse Engineering (SRE) tools;</p> <p>b. Digital Rights Management (DRM) "software"; <i>or</i></p> <p>c. "Software" designed to be installed by manufacturers, administrators or users, for the purposes of asset tracking or recovery.</p> <p>2. Network-capable devices include mobile devices and smart meters.</p> <p>Technical Notes:</p> <p>1. 'Monitoring tools': "software" or hardware devices, that monitor system behaviours or processes running on a device. This includes antivirus (AV) products, end point security products, Personal Security Products (PSP), Intrusion Detection Systems (IDS), Intrusion Prevention Systems (IPS) or firewalls.</p> <p>2. 'Protective countermeasures': techniques</p>	<p>"Intrusion software" (4) means "software" specially designed or modified to be run or installed without 'authorization' from owners or 'administrators' of computers or network-capable devices, and performing any of the following:</p> <p>a. The unauthorized extraction of data or information, from a computer or network-capable device, or the modification of system or user data; <i>or</i></p> <p>b. The modification of system or user data to facilitate access to data stored on a computer or network-capable device by parties other than parties authorized by the owner or 'administrator' of the computer or network-capable device.</p> <p><i>Notes:</i></p> <p>1. "Intrusion software" does not include any of the following:</p> <p>a. Hypervisors, debuggers or Software Reverse Engineering (SRE) tools;</p> <p>b. Digital Rights Management (DRM) "software"; <i>or</i></p> <p>c. "Software" designed to be installed by administrators or users, for the purposes of asset tracking, asset recovery or 'ICT security testing'</p> <p>d. "Software" that is distributed with the express purpose of helping detect, remove, or prevent its execution on computers or network-capable devices of unauthorized parties.</p> <p>2. Network-capable devices include mobile devices and smart meters.</p> <p>Technical Notes:</p> <p>1. 'Authorization': the informed consent of the user (i.e an affirmative indication of comprehension regarding the nature,</p>

<p><i>designed to ensure the safe execution of code, such as Data Execution Prevention (DEP), Address Space Layout Randomisation (ASLR) or sandboxing.</i></p>	<p><i>implications, and future consequences of an action, and agreement to the execution of that action)</i></p> <p><i>2. ‘Administrator’: owner-authorized agent or user of a network, computer or network-capable device.</i></p> <p><i>3. ‘ICT security testing’: discovery and assessment of static or dynamic risk, vulnerability, error, or weakness affecting “software”, networks, computers, network-capable devices, and components or dependencies therefor, for the demonstrated purpose of mitigating factors detrimental to safe and secure operation, use or deployment.</i></p>