



Plenary sitting

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*****I**
REPORT

on the proposal for a regulation of the European Parliament and of the Council setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast)
(COM(2016)0616 – C8-0393/2016 – 2016/0295(COD))

Committee on International Trade

Rapporteur: Klaus Buchner

(Recast – Rule 104 of the Rules of Procedure)

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ¶ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast)
(COM(2016)0616 – C8-0393/2016 – 2016/0295(COD))**

(Ordinary legislative procedure – recast)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0616),
 - having regard to Article 294(2) and Article 207(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0393/2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts¹,
 - having regard to the letter of 27 March 2017 from the Committee on Legal Affairs to the Committee on International Trade in accordance with Rule 104(3) of its Rules of Procedure,
 - having regard to Rules 104 and 59 of its Rules of Procedure,
 - having regard to the report of the Committee on International Trade and the opinion of the Committee on Foreign Affairs (A8-0000/2017),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the Commission proposal does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation Recital 3

Text proposed by the Commission

(3) An effective common system of export controls on dual-use items is therefore necessary to ensure that the international commitments and responsibilities of the Member States and of the Union, especially regarding non-proliferation, are complied with.

Amendment

(3) An effective common system of export controls on dual-use items is therefore necessary to ensure that the international commitments and responsibilities of the Member States and of the Union, especially regarding non-proliferation **and human rights**, are complied with.

Justification

The introduction of this addition is necessary and coherent with the introduction of Article 4 I.d.

Amendment 2

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 legitimate purposes, including law

Amendment

(5) **Certain cyber-surveillance items have emerged as a new category** of dual-use 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 of the data and/or by incapacitating or damaging the targeted system**. In response to calls from the European Parliament, and **evidence** that certain cyber-surveillance **items** have been misused by persons complicit in or responsible for directing or committing violations of **international human rights law** or international humanitarian law in **countries where such**

¹ OJ C 77, 28.3.2002, p. 1.

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.

violations have been established, it is appropriate to control the export of those *items*. *Controls should be based on clearly defined criteria*. 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 legitimate purposes, including law enforcement *and network and internet 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, *should make available* guidelines to support the practical applications of those controls *upon entry into force of this Regulation*. *Serious violations of human rights refer to situations as described in point 2.6 of Section 2 of Chapter 2 of the User's Guide to Council Common Position 2008/944/CFSP^{1a} as endorsed by the Foreign Affairs Council on 20 July 2015*.

^{1a} *Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ L 335, 13.12.2008, p. 99)*.

Amendment 3

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*

Amendment

(6) As a result, it is also appropriate to introduce a definition of cyber-surveillance *items*. It should also be clarified that assessment criteria for the control of exports of *cyber-surveillance* items *take into account the direct and indirect impact of these items on human rights, as reflected in the User's Guide to Council*

terrorism or human rights violations.

Common Position 2008/944/CFSP1a. A technical working group should be set up for the development of the assessment criteria, in cooperation with the European External Action Service (EEAS) and the Council Working Party on Human Rights (COHOM). In addition, an independent group of experts should be established within that technical working group. The assessment criteria should be publicly available and easily accessible.

Amendment 4

Proposal for a regulation Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) With the aim to define cyber-surveillance technology, items to be covered by this Regulation should include the telecommunication interception equipment, intrusion software, monitoring centers, lawful interception systems and data retention systems connected with such interception systems, devices for the de-codification of encryption, the recovery of hard disks, the circumvention of passwords and the analysis of biometric data as well as IP network surveillance systems.

Amendment 5

Proposal for a regulation Recital 6 b (new)

Text proposed by the Commission

Amendment

(6b) With regard to human rights assessment criteria, it is appropriate to refer to the Universal Declaration of Human Rights, the Charter of Fundamental Rights of the European Union, the European Convention for the

Protection of Human Rights and Fundamental Freedoms, the United Nations Human Rights Council Resolution on the Right to Privacy of 23 March 2017, the Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, the Report of the Special Rapporteur on the Right to Privacy of 24 March 2017, the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism of 21 February 2017 and the Judgment of the European Court of Human Rights Zakharov v. Russia of 4 December 2015;

Justification

This new recital is inextricably linked to recitals 5 and 6. Relevant international human rights instruments and decisions with particular emphasis on the right to privacy in the digital age should be referred to for further guidance.

Amendment 6

Proposal for a regulation
Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Regulation (EU) 2016/679 of the European Parliament and of the Council^{1a} (General Data Protection Regulation) 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 that Regulation stipulates that it applies to the processing of personal data regardless of whether the processing takes place within the Union or not, there is a strong incentive for the Union to remove cryptography items from the control list in order to facilitate the

implementation of the General Data Protection Regulation, and increase the competitiveness of European businesses in this context. In addition, 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 of human rights defenders.

^{1a} Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

Amendment 7

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-**

Amendment

(9) The scope of "catch-all controls", that apply to non-listed *cyber-surveillance* items in specific circumstances, should be clarified and harmonised. Appropriate exchange of information and consultations on "catch all controls" should ensure the effective and consistent application of controls throughout the Union. **Exchange of information should include support for the development of a public platform and the gathering of information from the private sector, public institutions and civil**

surveillance technology.

society organisations.

Amendment 8

Proposal for a regulation Recital 10

Text proposed by the Commission

(10) The definition of broker should be revised to avoid the circumvention of controls on the provision of brokering services by persons falling within the jurisdiction of the Union. Controls on the provision of brokering services should be harmonised to ensure their effective and consistent application throughout the Union and should also apply in order to prevent ***acts of terrorism and*** human rights violations.

Amendment

(10) The definition of broker should be revised to avoid the circumvention of controls on the provision of brokering services by persons falling within the jurisdiction of the Union. Controls on the provision of brokering services should be harmonised to ensure their effective and consistent application throughout the Union and should also apply in order to prevent human rights violations.

Amendment 9

Proposal for a regulation Recital 11

Text proposed by the Commission

(11) With the entry into force of the Lisbon Treaty, it has been clarified that the supply of technical assistance services involving a cross-border movement falls under Union competence. It is therefore appropriate to clarify the controls applicable to technical assistance services, and to introduce a definition of those services. For reasons of effectiveness and consistency, controls ***on*** the supply of technical assistance services should be harmonised and apply also in order to prevent ***acts of terrorism and*** human rights violations.

Amendment

(11) With the entry into force of the Lisbon Treaty, it has been clarified that the supply of technical assistance services involving a cross-border movement falls under Union competence. It is therefore appropriate to clarify the controls applicable to technical assistance services, and to introduce a definition of those services. For reasons of effectiveness and consistency, controls ***prior to*** the supply of technical assistance services should be harmonised and apply also in order to prevent human rights violations.

Amendment 10

Proposal for a regulation

Recital 12

Text proposed by the Commission

(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

(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 human rights violations.

Amendment 11

Proposal for a regulation Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Although the responsibility for deciding on individual, global and national export authorisations lies with the national authorities, an effective EU export control regime implies that economic operators, who intend to export items covered by this Regulation, exercise due diligence as set out, inter alia, in the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Business Conduct, and the UN Guiding Principles for Business and Human Rights.

Amendment 12

Proposal for a regulation Recital 14

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Text proposed by the Commission

(14) A standard requirement for compliance in the form of "internal compliance programmes" should be introduced in order to contribute to the level-playing field between exporters and to enhance the effective application of controls. For reasons of proportionality, this requirement should apply to specific control modalities in the form of global authorisations and certain general export authorisations.

Amendment

(14) A standard requirement, ***definition and description*** for compliance in the form of "internal compliance programmes" ***as well as a possibility of being certified in order to obtain incentives in the authorisation process from the national competent authorities*** should be introduced in order to contribute to the level-playing field between exporters and to enhance the effective application of controls. For reasons of proportionality, this requirement should apply to specific control modalities in the form of global authorisations and certain general export authorisations.

Justification

Companies need also legal clarity with respect to this obligation of having an Internal Compliance Program. If the companies have certified their ICP, then they should obtain incentives in the authorization process from the national competent authorities (shorter delay for instance)

Amendment 13

Proposal for a regulation
Recital 15

Text proposed by the Commission

(15) Additional Union general export authorisations should be introduced in order to reduce administrative burden on companies and authorities while ensuring an appropriate level of control of the relevant items to the relevant destinations. A global authorisation for large projects should also be introduced to adapt licensing conditions to the peculiar needs of industry.

Amendment

(15) Additional Union general export authorisations should be introduced in order to reduce administrative burden on companies, ***in particular SMEs***, and authorities while ensuring an appropriate level of control of the relevant items to the relevant destinations. A global authorisation for large projects should also be introduced to adapt licensing conditions to the peculiar needs of industry.

Amendment 14

Proposal for a regulation Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) 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, Section B of Annex I should be limited in scope only to cyber-surveillance technologies and not contain any duplications with Section A of Annex I.

Justification

This amendment is inextricably linked to the extension of scope of the Regulation as proposed by the Commission in the recast.

Amendment 15

Proposal for a regulation Recital 17

Text proposed by the Commission

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 ***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

(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*** items 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 ***their use for*** violations of

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.

international human rights *law* or international humanitarian law *in countries where such violations, especially regarding the freedom of expression, the freedom of assembly and the right to privacy, 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.

Decisions to delete entire subcategories on cryptography and encryption, such as in Category 5 of Section A of Annex I or as in Section I of Annex II should be made in consideration of the Recommendation of 27 March 1997 of the OECD Council concerning Guidelines for Cryptography Policy.

Amendment 16

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

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 **Sections A and B** of Annex I, Annex II and Section B of Annex IV to this Regulation. It is of particular importance

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.

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 *of 13 April 2016* on Better Law-Making. 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

Justification

Section B of Annex I should also be amendable by delegated acts.

Amendment 17

Proposal for a regulation Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) The risk of cyber theft and re-exportation to third countries, as referred to in Council Common Position 2008/944/CFSP, calls for the need to strengthen the provisions on dual-use items.

Justification

Necessary for reasons of internal logic of the text as this recital gives reasons for the addition of Article 14(1)(fa).

Amendment 18

Proposal for a regulation Recital 21

Text proposed by the Commission

(21) Pursuant to and within the limits of Article 36 of the Treaty on the Functioning of the European Union and pending a greater degree of harmonisation, Member States retain the right to carry out controls on transfers of certain dual-use items within the Union in order to safeguard public policy or public security. For reasons of proportionality, controls on the transfer of dual-use items within the Union should be revised in order to minimise the burden for companies and authorities. Moreover, the list of items subject to intra-Union transfer controls in Section B of Annex IV should be periodically reviewed in light of technological and commercial developments and as regards the assessment of the sensitivity of transfers.

Amendment

(21) Pursuant to and within the limits of Article 36 of the Treaty on the Functioning of the European Union and pending a greater degree of harmonisation, Member States retain the right to carry out controls on transfers of certain dual-use items within the Union in order to safeguard public policy or public security. For reasons of proportionality, controls on the transfer of dual-use items within the Union should be revised in order to minimise the burden for companies, ***in particular SMEs,*** and authorities. Moreover, the list of items subject to intra-Union transfer controls in Section B of Annex IV should be periodically reviewed in light of technological and commercial developments and as regards the assessment of the sensitivity of transfers.

Amendment 19

**Proposal for a regulation
Recital 22 a (new)**

Text proposed by the Commission

Amendment

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

Amendment 20

**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 therefore appropriate to provide for the

(25) Outreach to the private sector, ***in particular to SMEs,*** and transparency are essential elements for an effective export control regime. It is therefore appropriate

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.

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, those guidelines should be publicly available when this Regulation enters into force.

Amendment 21

Proposal for a regulation Recital 25 a (new)

Text proposed by the Commission

Amendment

(25a) It should be ensured that the definitions set out in this Regulation are in accordance with the definitions in the Union Customs Code.

Justification

This amendment is inextricably linked to Article 2 (definitions), which is part of the elements amended in the recast as well as to the amendments tabled to this Article of the dual-use Regulation.

Amendment 22

Proposal for a regulation Recital 27

Text proposed by the Commission

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 also appropriate to introduce provisions to tackle specifically instances of illicit trafficking of dual-use items in order to support effective enforcement of controls.

(27) Each Member State should determine effective, proportionate and dissuasive penalties applicable in the event of breach of the provisions of this Regulation. ***The creation of a level playing field for Union exporters should be enhanced. Therefore, penalties for infringements of this Regulation should be similar in nature and effect in all Member States.*** 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 23

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) Export controls have an impact on international security and trade with third countries and it is therefore appropriate to develop dialogue and cooperation with third countries in order to support a global level-playing field **and enhance international security.**

Amendment

(29) Export controls have an impact on international security and trade with third countries and it is therefore appropriate to develop dialogue and cooperation with third countries in order to support a global level-playing field, **promote upward convergence and enhance international security. To promote those goals, the Council, the Commission and Member States should, in close cooperation with the EEAS, pro-actively engage in the relevant international fora, including the Wassenaar Arrangement in order to establish the list of cyber-surveillance items set out in Section B of Annex I as an international standard. In addition, assistance to third countries with regard to the development of a dual-use items export control regime and appropriate administrative capacities should be strengthened and expanded, in particular with regard to customs.**

Amendment 24

Proposal for a regulation

Recital 31

Text proposed by the Commission

(31) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the

Amendment

(31) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the

Amendment 25

Proposal for a regulation

Article 2 – paragraph 1 – point 1 – point a

Text proposed by the Commission

(a) items which can be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery, including all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices;

Amendment

(a) ***traditional dual-use items meaning items, including software and hardware,*** which can be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery, including all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices;

Amendment 26

Proposal for a regulation

Article 2 – paragraph 1 – point 1 – point b

Text proposed by the Commission

(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*.

Amendment

(b) cyber-surveillance ***items including hardware, software and technology, which are specially designed to enable the covert intrusion into information and telecommunication systems and/or the monitoring, exfiltrating, collecting and analysing of data and/or incapacitating or damaging the targeted system without the specific, informed and unambiguous authorisation of the owner of the data, and which can be used in connection with the violation of 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*. *Network and ICT security research for the purpose of authorised testing or the protection of information security systems shall be excluded.*

Amendment 27

Proposal for a regulation Article 2 – paragraph 1 – point 5 a (new)

Text proposed by the Commission

Amendment

5a. “end-user” shall mean any natural or legal person or entity that is the final recipient of a dual use item.

Amendment 28

Proposal for a regulation Article 2 – paragraph 1 – point 13

Text proposed by the Commission

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 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*;

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 *a specified project. It shall be valid for between one and four years, except in duly justified cases based on the duration of the project, and may be renewed by the competent authority*;

Amendment 29

Proposal for a regulation Article 2 – paragraph 1 – point 22

Text proposed by the Commission

Amendment

22. 'internal compliance programme' shall mean effective, appropriate and proportionate means and procedures, including the development, implementation, and adherence to standardised operational compliance policies, procedures, standards of conduct, and safeguards, developed by exporters to ensure compliance with the provisions and with the terms and conditions of authorisations set out in this Regulation;

22. 'internal compliance programme' (**ICP**) shall mean effective, appropriate and proportionate means and procedures (**risk based approach**), including the development, implementation, and adherence to standardised operational compliance policies, procedures, standards of conduct, and safeguards, developed by exporters to ensure compliance with the provisions and with the terms and conditions of authorisations set out in this Regulation; ***the exporter shall have the possibility, on a voluntary basis, to have its ICP certified free of charge by the competent authorities on the basis of a reference ICP established by the Commission, in order to obtain incentives in the authorisation process from the national competent authorities;***

Justification

Companies need also legal clarity with respect to this obligation of having an Internal Compliance Program. If the companies have certified their ICP, then they should obtain incentives in the authorization process from the national competent authorities (shorter delay for instance)

Amendment 30

Proposal for a regulation

Article 2 – paragraph 1 – point 23

Text proposed by the Commission

Amendment

23. '**terrorist act**' shall mean a **terrorist act within the meaning of Article 1(3) of Common Position 2001/931/CFSP.**

deleted

Justification

Dual use goods are generally highly sophisticated items which are not widely available. Yet, the components needed to, for example, manufacture explosive devices for terrorist acts are widely available in retail stores and do not require cross border traffic of goods. Most

importantly, the EU already has legal instruments in place that addresses trade benefitting actors connected to terrorism. Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism lays down restrictive measures with regard to persons, groups and entities listed in its Annex as involved in terrorist acts. Trade with these actors is forbidden pursuant to Council Regulations (EC) No 2580/2001 and (EC) No 881/2002. Moreover, the formulation of this end use control is quite vague. Therefore, it is unnecessary and inappropriate to insert terrorism into dual use export controls and could actually be counterproductive in the fight against terrorism by creating legal uncertainty and confusion.

Amendment 31

Proposal for a regulation

Article 2 – paragraph 1 – point 23 a (new)

Text proposed by the Commission

Amendment

23a. "due diligence" shall mean the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems;

Justification

The inclusion of a comprehensive definition of “due diligence” is inextricably linked to Article 4(2).

Amendment 32

Proposal for a regulation

Article 4 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(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***

(d) ***with regard to cyber-surveillance items,*** for use by ***natural or legal*** persons in ***connection with*** violations of ***international*** human rights ***law*** or international humanitarian law in ***countries where serious violations of human rights have been*** identified by ***the competent bodies of the UN, the Council of Europe,***

European or national competent authorities, and **where** there is **evidence of the use of** this or similar items for directing or implementing such **serious** violations by the proposed end-user;

the Union, or national competent authorities, and there is **reason to suspect that** this or similar items **may be used** for **the purpose of** directing or implementing such violations by the proposed end-user;

Amendment 33

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. **deleted**

Justification

Die vorgeschlagene Erweiterung der catch all-Klausel ist unverhältnismäßig und nicht zielgerichtet, da sie auf vagen, undefinierten Begriffen basiert und in der vorliegenden Form von den handelnden Unternehmen nur schwer korrekt handhabbar ist. Sie schafft erhebliche Rechtsunsicherheit und die Gefahr einer Kriminalisierung der Wirtschaft, da die Verletzung von Melde- und Genehmigungspflichten iZm der Dual Use-Regelung gerichtlichen Strafdrohungen unterliegt. Der Entwurf belastet europäische Ausführer mit einem hohen zusätzlichen Prüfaufwand, der gerade für KMUs in der Praxis kaum leistbar sein dürfte, da diese kleineren und mittleren Unternehmen in der Regel nicht über die notwendige personelle Ausstattung verfügen. Um sich dennoch abzusichern, werden die Unternehmen gezwungen sein, vor fast jeder Ausfuhr nicht gelisteter Güter vorsorglich um bescheidmäßige Feststellung der Genehmigungsfreiheit anzusuchen. Dies schafft eine enorme zusätzliche Bürokratie, nicht nur bei der Wirtschaft, sondern auch bei der Behörde. Dies verzögert die Ausfuhren und vermindert die internationale Wettbewerbsfähigkeit, da Nicht-EU-Mitbewerber wesentlich rascher und flexibler auf Bedürfnisse der Weltmärkte werden reagieren können. Es wird kritisch angemerkt, dass in der vorliegenden Fassung die Endverwendungskontrolle in Bezug auf Menschenrechte und Terrorismus nicht auf bestimmte konkret benannte Güter und Länder eingeschränkt wird. Vorhandene EU-Rechtsakte, wie die Liste der Güter zur internen Repression oder die Anti-Folterverordnung sind wesentlich besser zur Kontrolle von Gütern iZm Menschenrechtsverletzungen geeignet. Die Bekämpfung von schwerwiegenden Menschenrechtsverletzungen und Terrorismus sind außerdem staatliche/hoheitliche Aufgaben, die nicht primär der Verantwortung des einzelnen Unternehmens überlassen bleiben dürfen.

Amendment 34

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

2. 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

2. If an exporter, ***becomes aware while exercising*** due diligence that dual-use items ***not listed in Annex I*** which he ***or she*** proposes to export, ***may be*** intended, in their entirety or in part, for any of the uses referred to in paragraph 1, he ***or she*** must notify the competent authority ***of the Member State in which he or she is established or resident in***, which will decide whether or not it is expedient to make the export concerned subject to authorisation.

Amendment 35

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.

Amendment 36

Proposal for a regulation

Article 4 – paragraph 4 – 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 "essentially similar transactions". They shall inform their customs administration and other relevant national authorities about the authorisations requirements .

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" ***meaning an item with essentially identical parameters or technical characteristics to the same end user or consignee.*** They shall inform their customs administration and other relevant national authorities about the authorisations requirements. ***The Commission shall publish in the Official Journal of the European Union a short description of the case, the reasoning of the decision and indicate, if applicable, the new authorisation requirement in a new Section E of Annex II.***

Amendment 37

Proposal for a regulation

Article 4 – paragraph 4 – 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 its human rights obligations.*** 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 38

Proposal for a regulation

Article 4 – paragraph 4 – subparagraph 4

Text proposed by the Commission

The Commission and the Member States **will** maintain an updated register of authorisation requirements in place.

Amendment

The Commission and the Member States **shall** maintain an updated register of authorisation requirements in place. ***The data available in that register shall be included in the report to the European Parliament, referred to in Article 24(2), and shall be accessible to the public.***

Amendment 39

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 if the broker ***is aware, has grounds for suspecting or*** 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).

Justification

The proposed wording aligns with Article 4(4) of the current Dual Use Regulation with regards to ‘awareness’ and with Article 5(3) with regard to ‘suspicion’. The combination of these three levels should be seen as equally important for motivating requests for authorisations.

Amendment 40

Proposal for a regulation

Article 5 – paragraph 2

Text proposed by the Commission

2. If a broker is aware that the dual-

Amendment

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.

use items for which he **or she** proposes brokering services are intended, in their entirety or in part, for any of the uses referred to in Article 4(1), he **or she** must notify the competent authority which **shall** make such brokering services subject to authorisation.

Justification

This AM is admissible and necessary because it is coherent with other amendments to areas subject to change in the recast procedure. Once a broker notifies licensing authorities of a risk that a dual use item is intended for uses covered by targeted end use controls in Art. 4.1.d it is not enough to leave it to the digression of the licensing authorities whether the brokering service should be made subject to licensing or not. It must be clear that in these cases an authorisation must be necessary, particularly since it is very likely that the license would be denied in these cases.

Amendment 41

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 referred to in **Article 4**.

Amendment

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 referred to in **paragraph 1 of Article 4**.

Amendment 42

Proposal for a regulation Article 7 – paragraph 2

Text proposed by the Commission

If a supplier of technical assistance is

Amendment

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.

aware that the dual-use items for which he **or she** proposes to supply technical assistance are intended, in their entirety or in part, for any of the uses referred to in Article 4, he **or she** must notify the competent authority which **shall** make such technical assistance subject to authorisation.

Justification

This AM on newly proposed language as part of the recast makes the previous amendments on Art. 4.2. and 5.2., as well as the following AM on Art. 10.6.c, necessary for coherence of the legal text. Once a supplier of technical assistance notifies licensing authorities of a risk that a dual use item is intended for uses covered by targeted end use controls in Art. 4.1.d it is not enough to leave it to the digression of the licensing authorities whether the technical assistance should be made subject to licensing or not. It must be clear that in these cases an authorisation must be necessary, particularly since it is very likely that the license would be denied in these cases.

Amendment 43

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

Amendment

1. A Member State may prohibit or impose an authorisation requirement on the export of dual-use items not listed in Annex I for reasons of public security, for human rights considerations **or for the prevention of acts of terrorism.**

Justification

As there is no need for an extended catch-all clause to control for exports to counter acts of terrorism, there should be a possibility for member states to control such items. This amendment is intrinsically linked to amendment 17 on Article 4.1 e). Terrorism is certainly linked to the public situation, but concerns specific actions that we should take into account because of the constant threat facing Member States and new forms of terrorism. Including a reference here would make it possible to raise awareness of the risk of terrorism in connection with exports of dual-use goods.

Amendment 44

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

Amendment

7. The relevant commercial documents relating to **exports to third countries and** 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, in particular, any sales contract, order confirmation, invoice or dispatch note.

Justification

The manufacturer's note of licensing requirements should also be compulsory for exports to third countries. The manufacturer has all the relevant technical information about the product and not the trader

Amendment 45

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 **no longer than four years, except in duly justified circumstances based on the duration of the project. This does not prevent competent authorities from annulling, suspending, modifying or revoking individual or global export authorisations at any time.**

Amendment 46

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

Justification

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

Amendment 47

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

All authorisations for cyber-surveillance items, as well as individual export authorisations for items for which there exists a high risk of diversion or re-exportation under undesirable conditions, shall be subject to an end-use statement. Authorisations for other items shall be subject to an end-use statement if appropriate.

Amendment 48

Proposal for a regulation

Article 10 – paragraph 4 – subparagraph 3 – introductory part

Text proposed by the Commission

Global export authorisations shall be subject to the implementation, by the exporter, of an effective internal compliance programme. The exporter shall also report to the competent authority, at least once a year, on the use of this authorisation; the report shall include at least the following information:

Amendment

Global export authorisations shall be subject to the implementation, by the exporter, of an effective internal compliance programme. ***The exporter shall have the possibility, on a voluntary basis, to have its ICP certified free of charge by the competent authorities on the basis of a reference ICP established by the Commission, in order to obtain incentives in the authorisation process from the national competent authorities.*** The exporter shall also report to the competent authority, at least once a year, ***or on request of the competent authority,*** on the use of this authorisation; the report shall include at least the following information:

Justification

Companies need also legal clarity with respect to this obligation of having an Internal Compliance Program. If the companies have certified their ICP, then they should obtain incentives in the authorization process from the national competent authorities (shorter delay for instance)

Amendment 49

Proposal for a regulation

Article 10 – paragraph 4 – subparagraph 3 – point d

Text proposed by the Commission

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

Amendment

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

Justification

Alignment with Article 2.12 which is asking for an end-user statement. It also aligns with the practice in most Member States.

Amendment 50

Proposal for a regulation

Article 10 – paragraph 4 – subparagraph 3 – point d a (new)

Text proposed by the Commission

Amendment

(da) the name and address of the end-user, where known.

Amendment 51

Proposal for a regulation

Article 10 – paragraph 4 – subparagraph 3 – point d b (new)

Text proposed by the Commission

Amendment

(db) the date on which the export took place;

Amendment 52

Proposal for a regulation

Article 10 – paragraph 5

Text proposed by the Commission

Amendment

5. The competent authorities of the Member States shall process requests for individual or global authorisations within ***a period of time to be determined by national law or practice. The competent authorities shall provide to the Commission all information on the average times for processing applications for authorisations relevant for the preparation of the annual report referred to in Article 24(2).***

5. The competent authorities of the Member States shall process requests for individual or global authorisations within ***30 days of the valid submission of the application. If the competent authority, for duly justified reasons, requires more time to process the application, it shall inform the applicant accordingly within 30 days. The competent authority shall, in any event, decide on applications for individual or global export authorisations, at the latest, within 60 days of valid submission of the application.***

Justification

Long processing periods during the application procedure would damage competitiveness. Customers will only be interested in doing business with suppliers if the latter respect their agreements with them. Customers will turn to competitors (from third countries) if there are any doubts about the reliability of an undertaking.

Amendment 53

Proposal for a regulation

Article 11 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Where the broker or the supplier of technical assistance is not resident or established on the territory of the Union, authorisations for brokering services and technical assistance under this Regulation shall be granted, *alternatively*, by the competent authority of the Member State ***where the parent company of the broker or supplier of technical assistance is established, or*** from where the brokering services or technical assistance will be supplied.

Amendment

Where the broker or the supplier of technical assistance is not resident or established on the territory of the Union, authorisations for brokering services and technical assistance under this Regulation shall be granted by the competent authority of the Member State from where the brokering services or technical assistance will be supplied. ***This includes brokering services and the supply of technical assistance by subsidiaries or joint ventures established in third countries but owned or controlled by companies established on the territory of the Union.***

Justification

As the extraterritorial requirements relating to brokerage and technical assistance are to be deleted, the rules on competence also need to be amended.

Amendment 54

Proposal for a regulation

Article 14 – paragraph 1 – introductory part

Text proposed by the Commission

1. In deciding whether or not to grant an individual or global export authorisation or to grant an authorisation for brokering services or technical assistance under this Regulation, or to prohibit a transit, the

Amendment

1. In deciding whether or not to grant an individual or global export authorisation or to grant an authorisation for brokering services or technical assistance under this Regulation, or to prohibit a transit, the

competent authorities of the Member States shall take into account ***the following criteria*** :

competent authorities of the Member States shall take into account ***all relevant considerations including:***

Justification

This provision of the proposal is the creation of limited, exhaustive 'criteria' which consist out of vague references clearly but which are not formulated as criteria at all.

Amendment 55

Proposal for a regulation

Article 14 – paragraph 1 – point a

Text proposed by the Commission

(a) Union and Member States' international obligations and commitments, in particular the obligations and commitments they have each accepted as members of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties ***and their obligations under sanctions imposed by 2 a decision or a common position adopted by the Council or by a decision of the OSCE or by a binding resolution of the Security Council of the United Nations;***

Amendment

(a) Union and Member States' international obligations and commitments, in particular the obligations and commitments they have each accepted as members of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties;

Amendment 56

Proposal for a regulation

Article 14 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

(aa) their obligations under sanctions imposed by a decision or a common position adopted by the Council or by a decision of the OSCE or by a binding resolution of the Security Council of the United Nations;

Amendment 57

Proposal for a regulation

Article 14 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the occurrence of violations of human rights law, fundamental freedoms and international humanitarian law in the country of final destination as has been established by the competent bodies of the UN, the Council of Europe or the Union;

Amendment 58

Proposal for a regulation

Article 14 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the internal situation in the country of final destination – competent authorities ***will*** not authorise exports that would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination;

(c) the internal situation in the country of final destination – competent authorities ***shall*** not authorise exports that would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination;

Amendment 59

Proposal for a regulation

Article 14 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

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

Amendment 60

Proposal for a regulation

Article 14 – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(db) compatibility of the exports of the items with regard to the technical and economic capacity of the recipient country;

Amendment 61

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, **and in particular, cyber-surveillance** items will be diverted or re-exported under undesirable conditions, **or be diverted to unintended military end-use or to terrorism.**

Amendment 62

Proposal for a regulation

Article 14 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. With regard to individual or global export authorisations or authorisations for brokering services or technical assistance for cyber-surveillance items, 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 risks relating to the rule of law, the legal framework for use of the items to be exported and the potential security risks for the Union and the Member States.

Where the competent authorities of a

Member State come to the conclusion that the existence of such risks is likely to lead to serious violations of human rights, Member States shall not grant export authorisations or shall annul, suspend, modify or revoke existing authorisations.

Amendment 63

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, upon entry into force of this Regulation***, to ensure common risk assessments by the competent authorities of the Member States for the implementation of those criteria ***and with a view to provide uniform criteria for licensing decisions. The Commission shall prepare guidelines in the form of a handbook detailing the steps to be followed by Member State competent licensing authorities and exporters exercising due diligence with practical recommendations on the implementation and compliance with the controls pursuant to point d of the first paragraph of Article 4 and the criteria listed in the first paragraph of Article 14, including examples of best practices. That handbook shall be developed in close cooperation with the EEAS and the Dual Use Coordination Group and shall involve external expertise from academics, exporters, brokers and civil society organizations, in accordance with procedures set out in paragraph 3 of Article 21 and shall be updated as is deemed necessary and appropriate.***

The Commission shall establish a capacity-building programme by developing common training programmes for officials from licensing and customs enforcement authorities.

Amendment 64

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* items set out in Section B of Annex I *shall* 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 *or if controls for a significant amount of unlisted items have been triggered pursuant to point d of the first paragraph of Article 4 of this Regulation. Amendments may also concern decisions to delist products already listed.*

Where imperative grounds of urgency require a removal or addition of specific items in Section B of Annex I, the procedure provided for in Article 17 shall apply to delegated acts adopted pursuant to this point.

Amendment 65

Proposal for a regulation

Article 16 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) The Commission may remove items from the list, in particular if, as the result of the fast-changing technological environment, those items have become lower tier or mass market products, which are easily available or technically easily modifiable.

Justification

Necessary as this amendment is inextricably linked to Article 16(2)(b).

Amendment 66

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

Text proposed by the Commission

Amendment

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

Amendment 67

Proposal for a regulation Article 18 – paragraph 5

Text proposed by the Commission

Amendment

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

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

Amendment 68

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

Text proposed by the Commission

Amendment

(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),**

(a) **all** information regarding the application of controls;

and, where available, data on exports of dual-use items carried out in other Member States;

Amendment 69

Proposal for a regulation

Article 20 – paragraph 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 ;

Amendment 70

Proposal for a regulation

Article 20 – paragraph 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 routes taken.

Amendment 71

Proposal for a regulation

Article 21 – paragraph 2

Text proposed by the Commission

2. **The Chair of** the Dual-Use Coordination Group shall, whenever it considers it to be necessary, consult exporters, brokers and other relevant

Amendment

2. The Dual-Use Coordination Group shall, whenever it considers it to be necessary, consult exporters, brokers and other relevant stakeholders concerned by

stakeholders concerned by this Regulation.

this Regulation.

Justification

When the DUCG considers it necessary to consult stakeholders, it can do so in practice by requesting the Chair to do consultations on behalf of the DUCG. The Chair cannot consider this necessary independently of the DUCG, as is currently implied by the proposal.

Amendment 72

Proposal for a regulation

Article 21 – paragraph 3

Text proposed by the Commission

3. The Dual-Use Coordination Group shall, where appropriate, set up technical expert groups composed of experts from Member States to examine specific issues relating to the implementation of controls, including issues relating to the updating of the Union control lists in Annex I. Technical expert groups shall, *where appropriate*, consult exporters, brokers and other relevant stakeholders concerned by this Regulation.

Amendment

3. The Dual-Use Coordination Group shall, where appropriate, set up technical expert groups composed of experts from Member States to examine specific issues relating to the implementation of controls, including issues relating to the updating of the Union control lists in **Section B of Annex I**. Technical expert groups shall consult exporters, brokers, **civil society organisations** and other relevant stakeholders concerned by this Regulation. ***The Dual-Use Coordination Group shall in particular establish a technical working group on assessment criteria as referred in the point d of the first paragraph of Article 4 and point b of the first paragraph of Article 14 and on the elaboration of the guidelines for due diligence in consultation with an independent group of experts, academics and civil society organisations.***

Amendment 73

Proposal for a regulation

Article 22 – paragraph 1

Text proposed by the Commission

1. Each Member State shall take appropriate measures to ensure proper enforcement of all the provisions of this Regulation. In particular, it shall lay down the penalties applicable to infringements of the provisions of this Regulation or of those adopted for its implementation. Those penalties must be effective, proportionate and dissuasive.

Amendment

1. Each Member State shall take appropriate measures to ensure proper enforcement of all the provisions of this Regulation. In particular, it shall lay down the penalties applicable to infringements, ***the facilitation of infringements and circumvention*** of the provisions of this Regulation or of those adopted for its implementation. Those penalties must be effective, proportionate and dissuasive. ***The measures shall include regular risk-based audits of exporters.***

Justification

That circumvention is an infringement is a normal consequence of the licencing obligations in this regulation and so Member States should provide penalties for such infringements. As a result, national (penal) law is still necessary to enforce the prohibition, and the obligation to foresee these measures can be provided for in article 22 - paragraph 1 of the Proposal. A level playing field should be encouraged when it comes to enforcement of the regulation. In this regard, audits/inspections regarding the compliance of companies with the requirements of the regulation (as already implemented in a number of MS) should be encouraged.

Amendment 74

**Proposal for a regulation
Article 22 – paragraph 2**

Text proposed by the Commission

2. The Dual-Use Coordination Group shall set up an Enforcement Coordination Mechanism with a view to establish direct cooperation and exchange of information between competent authorities and enforcement agencies.

Amendment

2. The Dual-Use Coordination Group shall set up an Enforcement Coordination Mechanism with a view to establish direct cooperation and exchange of information between competent authorities and enforcement agencies ***and to provide for uniform criteria for licensing decisions. Upon assessment by the Commission of the rules on penalties laid down by Member States, that mechanism shall provide for ways to make penalties for infringements of this Regulation similar in nature and effect.***

Amendment 75

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, ***in particular SMEs***, brokers and transit operators resident or established in that Member State.

Amendment 76

Proposal for a regulation Article 24 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Member States shall provide to the Commission all appropriate information for the preparation of the report. This annual report shall be public.

Amendment

Member States shall provide to the Commission all appropriate information for the preparation of the report. This annual report shall be public. ***Member States shall also disclose publicly, at least quarterly and in an easily accessible manner, meaningful information on each license with regard to the type of license, the value, the volume, nature of equipment, a description of the product, the end user and end use, the country of destination, as well as information regarding approval or denial of the license request. Commission and Member States shall take into account the legitimate interests of natural and legal persons concerned that their business***

secrets should not be divulged.

Amendment 77

Proposal for a regulation

Article 24 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Between five and seven years after the date of application of this Regulation, the Commission shall carry out an evaluation of this Regulation and report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.

Amendment

Between five and seven years after the date of application of this Regulation, the Commission shall carry out an evaluation of this Regulation and report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. ***This evaluation shall include a proposal on the deletion of Cryptography in Part 2 of Category 5 of Section A of Annex I.***

Justification

Cryptography technology does not belong in the scope of dual use export controls. It is the task of the Commission to introduce coordinated activity of Member States in the framework of the Wassenaar Arrangement to eliminate cryptography technology from the list of controlled items

Amendment 78

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) the end-use and end-user of the dual-use items.

Amendment 79

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

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.

Amendment 80

Proposal for a regulation
Article 27 – paragraph 1

Text proposed by the Commission

1. The Commission and the competent authorities of the Member States shall, where appropriate, maintain regular and reciprocal exchange of information with third countries.

Amendment

1. The Commission and the competent authorities of the Member States shall ***engage, where appropriate, in relevant international organisations, such as the OECD and those multilateral export control regimes in which they participate to promote international adherence to the list of cyber-surveillance items subject to export controls in Section B of Annex I and***, where appropriate, maintain regular and reciprocal exchange of information with third countries, ***including in the context of the dialogue on dual-use items provided for in the Union's partnership and cooperation agreements and strategic partnership agreements, engage in capacity-building and in promoting upward convergence. The Commission shall report annually to the European Parliament on such outreach activities.***

Amendment 81

Proposal for a regulation
Annex I – Section A – DEFINITIONS OF TERMS USED IN THIS ANNEX

Text proposed by the Commission

“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:

- a. The extraction of data or information, from a computer or network-capable device, or the modification of system or user data; or
- b. The modification of ***the standard execution path of a program or process in order to allow the execution of externally provided instructions***.

Notes:

1. “Intrusion software” does not include any of the following:
 - a. Hypervisors, debuggers or Software Reverse Engineering (SRE) tools;
 - b. Digital Rights Management (DRM) “software”; or
 - c. “Software” designed to be installed by ***manufacturers***, administrators or users, for the purposes of asset tracking ***or*** recovery.

2. Network-capable devices include mobile devices and smart meters.

Technical Notes:

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),

Amendment

“Intrusion software” (4) means “software” specially designed or modified ***to be run or installed without ‘authorisation’ from owners or ‘administrators’ of computers or network-capable devices***, and performing any of the following:

- a. The ***unauthorised*** extraction of data or information, from a computer or network-capable device, or the modification of system or user data; or
- 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 authorised by the owner of the computer or network-capable device***.

Notes:

1. “Intrusion software” does not include any of the following:
 - a. Hypervisors, debuggers or Software Reverse Engineering (SRE) tools;
 - b. Digital Rights Management (DRM) “software”; or
 - c. “Software” designed to be installed by administrators or users, for the purposes of asset tracking, ***asset*** recovery ***or*** ***‘ICT security testing’***

ca. “Software” that is distributed with the express purpose of helping detect, remove, or prevent its execution on computers or network-capable devices of unauthorised parties.

2. Network-capable devices include mobile devices and smart meters.

Technical Notes:

1. ***‘Authorisation’***: the informed consent of the user (i.e. an affirmative indication of comprehension regarding the nature, implications, and future consequences of an action, and agreement to the execution of that action).

*Intrusion Detection Systems (IDS),
Intrusion Prevention Systems (IPS) or
firewalls.*

2. *‘Protective countermeasures’:
techniques designed to ensure the safe
execution of code, such as Data
Execution Prevention (DEP), Address
Space Layout Randomisation (ASLR) or
sandboxing.*

2. *‘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.*

Justification

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

Amendment 82

**Proposal for a regulation
Annex I – Section B – title**

Text proposed by the Commission

Amendment

**B. LIST OF *OTHER DUAL-USE*
*ITEMS***

**B. LIST OF *CYBER-
SURVEILLANCE ITEMS***

Justification

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

Amendment 83

**Proposal for a regulation
Annex I – Section B – category 10 – point 10A001 – Technical note – point e a (new)**

Text proposed by the Commission

Amendment

*(e a) network and security research for
the purposes of authorised testing or the
protection of information security
systems.*

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 84

Proposal for a regulation

Annex II – Section A – part 3 – paragraph 3

Text proposed by the Commission

3. *Any exporter intending to use this authorisation shall register prior to the first use of this authorisation **with the competent authority of the Member State where he is resident or established.*** Registration shall be automatic and acknowledged by the competent **authority** to the exporter within **ten** working days of receipt.

Amendment

3. *A Member State may require exporters established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the competent **authorities** to the exporter **without delay and in any case** within **10** working days of receipt.*

Amendment 85

Proposal for a regulation

Annex II – Section A – part 3 – paragraph 4

Text proposed by the Commission

4. The registered exporter shall notify the first use of this authorisation to the competent authority of the Member State where he is resident or established, no later than **10 days before** the date **of** the first export.

Amendment

4. The registered exporter shall notify the first use of this authorisation to the competent authority of the Member State where he **or she** is resident or established no later than **30 days after** the date **when** the first export **took place.**

Justification

The notification of the use of the authorisation shall remain ex-post.

Amendment 86

Proposal for a regulation

Annex II – Section A – part 3 – paragraph 5 – point 4

Text proposed by the Commission

Amendment

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

(4) the end-use and end-user of the dual-use items.

Justification

Alignment with Article 2.12 which is asking for an end-user statement. It also aligns with the practice in most Member States.

Amendment 87

Proposal for a regulation

Annex II – Section B – part 3 – paragraph 3

Text proposed by the Commission

Amendment

3. **Any exporter intending to use this authorisation shall register prior to the first use of this authorisation with the competent authority of the Member State where he is resident or established.**

Registration shall be automatic and acknowledged by the competent **authority** to the exporter within 10 working days of receipt.

3. **A Member State may require exporters established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within 10 working days of receipt.**

Amendment 88

Proposal for a regulation

Annex II – Section B – part 3 – paragraph 5 – point 4

Text proposed by the Commission

Amendment

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

(4) the end-use and end-user of the dual-use items.

Justification

Alignment with Article 2.12 which is asking for an end-user statement. It also aligns with the

practice in most Member States.

Amendment 89

Proposal for a regulation

Annex II – Section C – part 3 – paragraph 5

Text proposed by the Commission

5. The registered exporter shall notify the first use of this authorisation to the competent authority of the Member State where he is resident or established, no later than **10 days before** the date of the first **export**.

Amendment

5. The registered exporter shall notify the first use of this authorisation to the competent authority of the Member State where he **or she** is resident or established, no later than **30 days after** the date **when the first export took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of that authorisation. Member States shall notify the Commission of the notification mechanism chosen for that authorisation. The Commission shall publish the information notified to it in the C series of the Official Journal of the European Union.**

Justification

The notification of the use of the authorisation shall remain ex-post.

Amendment 90

Proposal for a regulation

Annex II – Section C – part 3 – paragraph 6 – point 4

Text proposed by the Commission

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

Amendment

(4) the end-use and end-user of the dual-use items.

Justification

Alignment with Article 2.12 which is asking for an end-user statement. It also aligns with the practice in most Member States.

Amendment 91

Proposal for a regulation

Annex II – Section D – part 3 – paragraph 6

Text proposed by the Commission

6. The registered exporter shall notify the first use of this authorisation to the competent authority of the Member State where he is resident or established, no later than **10 days before** the date **of** the first export.

Amendment

6. The registered exporter shall notify the first use of this authorisation to the competent authority of the Member State where he **or she** is resident or established no later than **30 days after** the date **when** the first export **took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of this authorisation. Member States shall notify the Commission of the notification mechanism chosen for this authorisation. The Commission shall publish the information notified to it in the C series of the Official Journal of the European Union.**

Justification

The notification of the use of the authorisation shall remain ex-post.

Amendment 92

Proposal for a regulation

Annex II – Section D – part 3 – paragraph 7 – point 4

Text proposed by the Commission

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

Amendment

(4) the end-use and end-user of the dual-use items.

Justification

Alignment with Article 2.12 which is asking for an end-user statement. It also aligns with the practice in most Member States.

Amendment 93

Proposal for a regulation

Annex II – Section F – part 3 – paragraph 5 – point 4

Text proposed by the Commission

Amendment

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

(4) the end-use and end-user of the dual-use items.

Justification

Alignment with Article 2.12 which is asking for an end-user statement. It also aligns with the practice in most Member States.

Amendment 94

Proposal for a regulation

Annex II – Section G – part 3 – paragraph 8 – point 4

Text proposed by the Commission

Amendment

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

(4) the end-use and end-user of the dual-use items.

Justification

Alignment with Article 2.12 which is asking for an end-user statement. It also aligns with the practice in most Member States.

Amendment 95

Proposal for a regulation

Annex II – Section H – part 3 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

(1) by **the exporter or by any entity** owned or controlled by the **exporter**;

(1) by **any company resident or established in a Member State of the Union to any sister company, subsidiary or parent company provided these entities are owned or controlled by the same parent company or by each other and provided the item is for use for company**

Text proposed by the Commission

Amendment

Any exporter intending to use this authorisation shall register prior to the first use of this authorisation with the competent authority of the Member State where he is resident or established.
Registration shall be automatic and acknowledged by the competent ***authority*** to the exporter within 10 working days of receipt.

A Member State may require exporters established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within 10 working days of receipt.

Amendment 99

Proposal for a regulation Annex II – Section J – part 3 – paragraph 5 – point 4

Text proposed by the Commission

Amendment

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

(4) the end-use and end-user of the dual-use items.

Justification

Alignment with Article 2.12 which is asking for an end-user statement. It also aligns with the practice in most Member States.

EXPLANATORY STATEMENT

“Our Union is a guarantee that freedom, dignity, democracy and independence are no longer only our dreams, but our everyday reality.” Donald Tusk at 60th anniversary of the Treaty of Rome, 25th March 2017

The European Union is not only united by our common interests through the European Single Market, but also by our common values spelled out in the Treaty of Lisbon. With an increasingly shaky international order and our common values put into question by internal and external forces, it is more than ever necessary that the EU upholds and promotes its values. In its article 3 (5), the Treaty of Lisbon has clearly spelled out the overarching objective of the EU’s external action, namely that the EU *“contributes to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including the respect for the principles of the United Nations Charter.”*

The proposed reform of the EU export control regime through a recast of the dual-use regulation presented by the European Commission is an important piece of legislation contributing to achieve these objectives: The dual-use regulation has the potential to back our foreign and security policy fostering peace and stability in the world, the proposed inclusion of the human rights dimension provides the EU with an additional tool to protect human rights globally and an effective export control mechanism is central to uphold free and fair trade.

As the most powerful trading block in the world, the EU remains an influential player with important leverage and with great responsibility in the international trading system.

Today, trade policy is in the limelight of public debate. While our economies are highly interconnected and globalisation has led to highly integrated value chains, EU citizens are asking questions about the effects of trade. EU Trade Policy should respond to these questions, in order to regain trusts in the benefits of it for our citizens. A comprehensive and value-based approach to EU Trade Policy will enhance legitimacy in EU Trade Policy-Making.

Reforming the EU export control regime: a tool to put values at the centre of EU Trade Policy

The European Parliament has proven that it is possible to enact legislation with the aim of promoting value-based trade. With the adoption of the anti-torture¹ as well as the conflict minerals regulations, the European Parliament has shown that we do not only *want* a value-based Common Commercial Policy, but the EU co-legislators are *capable* of reaching an agreement to enact legislative instruments to promote human rights through EU Trade Policy, thereby, fostering comprehensive external action by the EU.

In this respect, the rapporteur welcomes the Commission’s proposal for reform of the dual-use regulation, which is another piece of legislation striving toward implementing the EU’s “Trade for all” strategy.

Adapting to new threats: Cyber-surveillance and human rights violations

The rapporteur considers the approach to incorporate the human rights dimension into the EU export control regime by widening the scope of application of the regulation to human

¹ REGULATION (EU) 2016/2134 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 November 2016 amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

security positively. In this context, cyber surveillance technologies are a sensitive export item, which need to be controlled. In recent years, the European Parliament has called not less than fifteen times - by adopting resolutions - to put forward measures, which ban exports of surveillance technologies to authoritarian regimes and violators of human rights. Therefore, this Parliament can only welcome that the Commission responded to this call by incorporating a targeted catch-all clause in the EU export regime. The type of arms most relevant for armed conflicts have changed overtime and continue to change rapidly. History has told us that those, who do not adapt to these changes, will decline and perish in armed conflicts. The type of weapons, which are crucial for warfare in the 21st century, are changing, whereby digital weapons are clearly gaining relevance in conflicts. Cyber-technologies are used to spy on enemies and manipulate adversaries. The EU needs to react to this threat by including cyber technologies in the EU export control regime, so that this technology is not used to seriously violate human rights and, thereby, undermine security, democracy, pluralism and freedom of expression.

Making the system more effective: Enhancing involvement of and guidance for stakeholders

The EU export control regime needs to be effective. In order to effectively react to new threats and challenges, the list of controlled items needs to be built up step-by-step in a coordinated and harmonised manner by EU Member States. The rapporteur strives to make this process more inclusive, involving relevant international bodies and particularly civil society, and ensure that the process reflects the need for a harmonised approach by EU Member States reflecting the Community method securing the functioning of the EU internal market.

Additionally, the rapporteur is of the opinion that further clarifications are needed to allow stakeholders - notably industry and licensing authorities - to be able to consistently implement the inclusion of the human security dimension and enlarging the scope in the reformed dual-use regulation. The rapporteur put forward a number of amendments with the aim to clarify definitions and establish guidance for the companies that will comply with this regulation. In the view of the rapporteur, the Commission should elaborate further guidance on the definition of serious human rights violations with the aim to ensure a harmonised implementation of this regulation. In this context, it is also important to clarify the responsibilities for “due diligence” for industries. The rapporteur is aware of concerns voiced by industry to be able to comply with the additional responsibilities without undermining the competitiveness of EU companies or leading to overstretching of the capacity to thoroughly handle licensing requests. Therefore, he urges for further, timely guidance together with all relevant stakeholders in this area. In fact, the rapporteur requests in his amendments that comprehensive guidance should be ready and available no later than at the implementation date of this regulation.

Making the EU export control regime more effective also means closing remaining loopholes. Having this objective in mind the rapporteur suggests a number of modifications to the proposed regulation. In this context, the validity for granting licenses should be prolonged to ease the administrative burden, but powers of licensing authorities to revoke license, in order to react rapidly to developments need to be maintained.

Ensuring a functioning internal market: Enhancing harmonisation in the implementation of the EU export control regime:

First of all, the rapporteur welcomes the objective of the European Commission to minimise the administrative burden of intra-EU transfers. The proposed EU regulation should facilitate the functioning of the internal market. The rapporteur is supportive of the proposal for optimisation of the EU licensing architecture.

However, the EU export control regime is only as effective as the weakest link in its control regime. Therefore, the rapporteur believes that the dual-use regulation needs to be applied more uniformly throughout the EU. He would like to see the mandatory consultation procedure between competent authorities of Member States further strengthened and avoid any veto powers for controlling sensitive items. In this context, the rapporteur believes that the issue of harmonising sanctions in case of violations of the EU export control regime must also need be discussed in the context of the reform. Knowing that this relates to criminal law falling within the competences of the Member States, the rapporteur considers that increased harmonisation of sanctions are part and parcel to strengthen the regime.

Global leadership: Leading for the creation of a global level-playing field

The EU export control regime is embedded in international bodies. The EU is a strong believer in multi-lateralism and the rapporteur strongly supports a close linkage between international regimes and the EU export control mechanism. However, the EU is the major trading block in the world and a powerful promoter of human rights globally. Therefore, we must show leadership and should not refrain from taking a step ahead of our partners, when needed. The EU should more pro-actively strive towards enhanced regulatory convergence at global level. The rapporteur welcomes the basis for the development of regular dialogues between the EU and key trade partners and believes that this dialogue needs to be further streamlined into the EU's Trade Policy.

Time to act: Make the EU export control regime 'future-proof'

The last years have taught us that the international order has become more fragile. The values, which bind the EU together - democracy, freedom and the rule of law - are threatened in many countries, with which we are economically and politically interconnected. Technological changes are accelerating and impacting not only on how our societies live, but also on how our free and open societies are threatened. Expectations by our citizens vis-a-vis the effectiveness of our external policies in general, and EU Trade Policy in particular are increasing. The single internal market is an important asset of the EU to be promoted for the well-being of our citizens and the competitiveness of our industries. In times of increasing uncertainties, the EU should not shy away from leading globally in defence of our values. In this geopolitical context, it is time to act by building on the existing tools to better protect and promote our values and interests globally. The reform of the dual-use regulation is a much awaited and welcome opportunity to make the EU export control regime 'future-proof' and thereby contributing to achieve the EU's objectives as spelled out in the Treaty of Lisbon. The rapporteur is committed to work constructively to forge an EP position to achieve this and to ultimately work towards enacting a 'future-proof', reformed dual-use regulation.

ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

D(2017)13264

Bernd Lange
Chair, Committee on International Trade
ASP 12G205
Brussels

Subject: 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) (COM(2016)0616 – C8-0393/2016 – 2016/0295(COD))

Dear Chair,

The Committee on Legal Affairs has examined the proposal referred to above, pursuant to Rule 104 on Recasting, as introduced into the Parliament's Rules of Procedure.

Paragraph 3 of that Rule reads as follows:

“If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible.

In such a case, over and above the conditions laid down in Rules 169 and 170, amendments shall be admissible within the committee responsible for the subject-matter only if they concern those parts of the proposal which contain changes.

However, amendments to parts of the proposal which remain unchanged may, by way of exception and on a case-by-case basis, be accepted by the Chair of the committee responsible for the subject matter if he or she considers that this is necessary for pressing reasons relating to the internal logic of the text or because the amendments are inextricably linked to other admissible amendments. Such reasons must be stated in a written justification to the amendments.”

Following the opinion of the Consultative Working Party of the legal services of the Parliament, the Council and the Commission, which has examined the recast proposal, and in keeping with the recommendations of the rapporteur, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such in the proposal and by the Consultative Working Party and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in their substance.

In conclusion, at its meeting of 23 March 2017, the Committee on Legal Affairs, by 21 votes in favour, 0 votes against and 0 abstentions¹, recommends that the Committee on International Trade, as the committee responsible, can proceed to examine the above proposal in accordance with Rule 104.

Yours sincerely,

Pavel Svoboda

Encl.: Report signed by the President of the Consultative Working Party.

¹ The following Members were present: Isabella Adinolfi, Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Daniel Buda, Jean-Marie Cavada, Kostas Chrysogonos, Eugen Freund, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sajjad Karim, Sylvia-Yvonne Kaufmann, António Marinho e Pinto, Jiří Maštálka, Angelika Niebler, Maria Noichl, Emil Radev, Julia Reda, Virginie Rozière, Pavel Svoboda, Rainer Wieland, Tadeusz Zwiefka

ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION



CONSULTATIVE WORKING PARTY
OF THE LEGAL SERVICES

Brussels, 26 January 2017

OPINION

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT
THE COUNCIL
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)

COM(2016) 616 final of 28.9.2016 - 2016/0295 (COD)

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 20 October and 1 and 7 December 2016 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At those meetings¹, an examination of the proposal for a Regulation of the European Parliament and of the Council recasting Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items resulted in the Consultative Working Party's establishing, by common accord, that the following should have been marked with the grey-shaded type generally used for identifying substantive changes:

- in Article 6(1), the proposed deletion of the words '*the transit occurs*';
- in Article 20(1), second subparagraph, the proposed replacement of the words '*list of those authorities*' with the word '*information*';
- the proposed deletion of the entries relating to Croatia and Iceland in the lists of countries contained in points C, D, E and F of Annex II.

In consequence, examination of the proposal has enabled the Consultative Working Party to

¹ The Consultative Working Party worked on the basis of the English language version of the proposal, being the master-copy language version of the text under discussion.

conclude, without dissent, that at the date on which the proposal was submitted by the Commission to the European Parliament and to the Council it did not comprise any substantive amendments other than those identified as such. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that at that date the proposal contained a straightforward codification of the existing legal text, without any change in its substance.

However, the Consultative Working Party also acknowledged that on 15 November 2016 a new act amending the act being recast was published in the Official Journal, *i.e.* Commission Delegated Regulation (EU) 2016/1969 of 12 September 2016 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. Regulation (EU) 2016/1969 entered into force on 16 November 2016. Its Article 1 introduced new annexes which replaced the texts previously contained in Annex I, Annexes IIa to IIg and Annex IV. That latest amendment should also be taken into account in the context of the legislative procedure carried out with regard to recast proposal COM(2016) 616 final.

F. DREXLER
Jurisconsult

H. LEGAL
Jurisconsult

L. ROMERO REQUENA
Director General

31.5.2017

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS

for the Committee on International Trade

on the proposal for a regulation of the European Parliament and of the Council setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast)

(COM(2016)0616 – C8-0393/2016 – 2016/0295(COD))

Rapporteur: Marietje Schaake

SHORT JUSTIFICATION

New technologies have profound impact on foreign policy. From cybersecurity to human rights, from digital trade to development, we need to ensure the EU fosters opportunities and mitigates threats. The review of the Dual-Use Regulation aims to further strengthen the EU's role as a leading and responsible global actor by preventing the proliferation of technologies that hurt our strategic interests or the human rights of people worldwide.

This update is essential in a time of rapid technological changes and the ongoing shift in the global geopolitical balance. The rapporteur strongly supports the Commission's human security approach and has sought to clarify this in a number of areas, which further contributes to the streamlining of human rights in the EU's foreign policy and trade policy and adds coherence between the EU's foreign and security policies and its economic and commercial interests.

Given the rapid changes in technology, it is very timely that the EU added certain cyber-surveillance technologies to the control list as dual use items which can be used to commit human rights violations or to undermine EU strategic interests. At the same time, not every technology requires controls, and the exports of technologies that actually enhance human rights protection, such as encryption, should be facilitated. We also need to be sure that we do not create unnecessary burdens for exporters or hurdles for legitimate internet security research.

The targeted human security end-use control for non-listed items is a good step to make sure the EU can stop illegitimate transfers, but it should provide more legal clarity. Dual-use items (especially cyber-surveillance technology) are often used both to directly commit human rights violations, but they can also facilitate other serious human rights violations. Such as when illicitly obtained information of human rights defenders or journalists is used to subsequently detain and/or torture them.

We need a future proof framework that can take into consideration changing realities. When Member States decide to enact the targeted end-use control, an amendment of the control lists should be considered. When it comes to the EU autonomous list covering cyber-surveillance technologies, the urgency procedure should be available to allow for quick responses to changes on the ground in third countries or in terms of new technological developments requiring scrutiny.

With foreign transactions becoming ever more complex, it is important to enhance information sharing and to strengthen transparency. Member States should make available all licensing information, to enhance accountability and oversight. This would build on existing best practices while some already do this voluntarily. To create a level playing field, penalties on breaches of the regulation should also be uniform across the Union.

The European Parliament has been pushing for an update of the dual-use regulation for years, it is essential that the process now moves on as swiftly as possible.

AMENDMENTS

The Committee on Foreign Affairs calls on the Committee on International Trade, as the committee responsible, to take into account the following amendments:

Amendment 1

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*

Amendment

(5) *Certain cyber-surveillance technologies have emerged as a new category of dual-use items that have been used to directly interfere with human rights, including the right to privacy, the right to data protection, freedom of speech and freedom of 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 to evidence that certain cyber-surveillance technologies have been misused by persons complicit in or responsible for directing or committing*

communication technology used for 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.

violations of *international* human rights 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. *Similarly 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 and to enable secure communications, including for human rights defenders. It is therefore appropriate to further facilitate the export of encryption.*

Amendment 2

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 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 *take into account the direct and indirect impact of cyber-surveillance 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 2008/944/CFSP^{1a}.*

^{1a} *Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ L 335, 13.12.2008, p. 99).*

Amendment 3

Proposal for a regulation Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) Measures controlling the export of cyber-surveillance technology should not go beyond what is necessary and proportionate. They should, in particular, not prevent the export of information and communication technology used for legitimate purposes, including law enforcement and internet security research. The Commission, in close consultation with the Member States and stakeholders, should develop guidelines to support the practical applications of those measures.

Justification

This amendment is necessary by reasons of internal logic of the text as it builds on the amendments made to recitals 5 and 6.

Amendment 4

Proposal for a regulation Recital 9

Text proposed by the Commission

Amendment

(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.

deleted

Amendment 5

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) Additional Union general export authorisations should be introduced in order to reduce administrative burden on companies and authorities while ensuring an appropriate level of control of the relevant items to the relevant destinations. A global authorisation for large projects should also be introduced to adapt licensing conditions to the peculiar needs of industry.

Amendment

(15) Additional Union general export authorisations should be introduced in order to reduce administrative burden on companies, ***in particular SMEs***, and authorities while ensuring an appropriate level of control of the relevant items to the relevant destinations. A global authorisation for large projects should also be introduced to adapt licensing conditions to the peculiar needs of industry.

Amendment 6

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

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 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 ***their 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

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.

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 7

Proposal for a regulation Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) The risk of cyber theft and re-exportation to third countries, as referred to in Council Common Position 2008/944/CFSP, calls for the need to strengthen the provisions on dual-use items.

Justification

Necessary for reasons of internal logic of the text as this recital gives reasons for the addition of Article 14(1)(fa).

Amendment 8

Proposal for a regulation Recital 21

Text proposed by the Commission

Amendment

(21) Pursuant to and within the limits of Article 36 of the Treaty on the Functioning of the European Union and pending a greater degree of harmonisation, Member States retain the right to carry out controls on transfers of certain dual-use items within the Union in order to safeguard public policy or public security. For reasons of proportionality, controls on the transfer of dual-use items within the Union

(21) Pursuant to and within the limits of Article 36 of the Treaty on the Functioning of the European Union and pending a greater degree of harmonisation, Member States retain the right to carry out controls on transfers of certain dual-use items within the Union in order to safeguard public policy or public security. For reasons of proportionality, controls on the transfer of dual-use items within the Union

should be revised in order to minimise the burden for companies and authorities. Moreover, the list of items subject to intra-Union transfer controls in Section B of Annex IV should be periodically reviewed in light of technological and commercial developments and as regards the assessment of the sensitivity of transfers.

should be revised in order to minimise the burden for companies, *in particular SMEs*, and authorities. Moreover, the list of items subject to intra-Union transfer controls in Section B of Annex IV should be periodically reviewed in light of technological and commercial developments and as regards the assessment of the sensitivity of transfers.

Amendment 9

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 make all relevant licensing data publicly available.

Justification

Necessary for reasons of internal logic of the text because this new recital gives reasons to changes made to Article 20(2)(a).

Amendment 10

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 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.

(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. ***Given the importance of guidance for the interpretation of some elements of this Regulation, it is appropriate that this***

guidance becomes publicly available when this Regulation enters into force.

Amendment 11

Proposal for a regulation Recital 29

Text proposed by the Commission

(29) Export controls have an impact on international security and trade with third countries and it is therefore appropriate to develop dialogue and cooperation with third countries in order to support a global level-playing field and enhance international security.

Amendment

(29) Export controls have an impact on international security and trade with third countries and it is therefore appropriate to develop dialogue and cooperation with third countries in order to support a global level-playing field and enhance international security. *As Member States make up the majority of signatories to the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, setting high standards at Union level can also have positive knock-on effects on global standards.*

Amendment 12

Proposal for a regulation Article 2 – paragraph 1 – point 1 – introductory part

Text proposed by the Commission

1. ‘dual-use items’ shall mean items, including software and technology, which can be used for both civil and military purposes, and shall include:

Amendment

1. ‘dual-use items’ shall mean items, including software and technology, which can be used for both civil and military purposes and shall include *items which can be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery, including all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices;*

Justification

Necessary as this amendment is inextricably linked to the amendment deleting Article 2(1)(a).

Amendment 13

Proposal for a regulation

Article 2 – paragraph 1 – point 1 – point a

Text proposed by the Commission

Amendment

(a) items which can be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery, including all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices;

deleted

Amendment 14

Proposal for a regulation

Article 2 – paragraph 1 – point 1 a (new)

Text proposed by the Commission

Amendment

1a. 'cyber-surveillance technology' shall mean items (hardware, software, technology other than dual-use items) which can be used for the commission of serious and systematic violations of human rights or international humanitarian law, especially the right to privacy, freedom of expression and freedom of assembly, or can pose a threat to international security or the essential security interests of the Union and its Member 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 administrator of the

systems. This shall include items related to the following technologies and equipment:

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

Cyber-surveillance technology shall not include items specially designed for any of the following:

- (a) billing;*
- (b) data collection functions within network elements (e.g. Exchange or HLR);*
- (c) quality of service of the network (QoS);*
- (d) user satisfaction (quality of experience - QoE);*
- (e) firewalls for network protection;*
- (f) the building, functioning, maintenance or protection of:*
 - public energy, gas- or water infrastructure;*
 - smart transport management of civil rail, road, air and water transport;*
 - plant engineering and e-health;*
 - industrial manufacturing;*

Justification

Necessary as this amendment is inextricably linked to the amendment deleting Article 2(1)(a).

Amendment 15

Proposal for a regulation

Article 2 – paragraph 1 – point 5 a (new)

Text proposed by the Commission

Amendment

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

Justification

This amendment is justified by the internal logic of the text as defining end-user as the actual final recipient and user of the item is necessary 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 16

Proposal for a regulation

Article 2 – paragraph 1 – point 23 a (new)

Text proposed by the Commission

Amendment

23a. 'due diligence' shall mean the process through which businesses can identify, prevent, mitigate, and account for how they address their actual and potential adverse impacts on human rights as an integral part of business decision-making and risk management systems as laid out in the UN Guiding Principles for Business and Human Rights.

Justification

Necessary for the internal logic of the text as this amendment defines clearly a term introduced in the Commission proposal to Article 4(2).

Amendment 17

Proposal for a regulation

Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. An authorisation shall be required for the export of the cyber-surveillance

Justification

Necessary as this amendment is inextricably linked to the amendments to Article 2(1) which create a separate category of 'cyber-surveillance technology'.

Amendment 18

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

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 Union** or national competent authorities, and where there is evidence of the use of this or similar items for directing or implementing such violations by the proposed end-user;

Justification

Necessary because the human rights violations committed with dual-use items often will not qualify as serious human rights violations. Violations of human rights using cyber-surveillance tools (violation of right of privacy, free speech, etc.) are often committed in the run-up to other violations which can be classified as serious, such as torture, forced disappearances, etc. Also necessary to clarify which international bodies should provide the assessments, for more legal certainty.

Amendment 19

Proposal for a regulation

Article 4 – paragraph 1 – point e

Text proposed by the Commission

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

Amendment

(e) for use **by persons, groups and entities involved in terrorist acts and subject to restrictive measures as laid**

Justification

Necessary to provide more legal certainty and clarity.

Amendment 20

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

2. 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

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

Justification

Necessary for the internal logic of the text as this amendment is linked to the amendments to Article 4(1).

Amendment 21

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

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 **one year**, and may be renewed by the competent authority.

throughout the Union. The authorisations shall be valid for **two years**, and may be renewed by the competent authority.

Amendment 22

Proposal for a regulation

Article 4 – paragraph 4 – 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 "essentially similar transactions". They shall inform their customs administration and other relevant national authorities about the authorisations requirements.

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. ***Furthermore, if no objections are received, the Commission shall assess the necessity to adopt delegated acts amending the lists of dual-use items set out in Annex I and Section B of Annex IV by adding items referred to in paragraphs 1, 2 and 3 to those lists in line with the procedures provided for in Article 16.***

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.

Amendment 23

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.

Amendment 24

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

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 25

Proposal for a regulation

Article 14 – paragraph 1 – point b

Text proposed by the Commission

(b) respect for human rights in the country of final destination as well as respect by that country of international humanitarian law;

Amendment

(b) respect for human rights ***law*** in the country of final destination as well as respect by that country of international humanitarian law;

Amendment 26

Proposal for a regulation

Article 14 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) the strengthening of controls, in compliance with the criteria established in

***Council Common Position
2008/944/CFSP, with regards to exports
to companies, persons or countries that
lack the necessary security elements to
avoid or prevent hacking and/or cyber-
theft and to countries which could
potentially act as an intermediary for
countries that have been listed on an
embargo or export prohibition list or that
can pose a threat to human rights;***

Justification

Necessary as this amendment is a logical expansion of the list in Article 14(1) which was already substantially changed in the Commission proposal.

Amendment 27

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

Text proposed by the Commission

Amendment

***(fb) 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;***

Justification

Necessary as this amendment is a logical expansion of the list in Article 14(1) which was already substantially changed in the Commission proposal.

Amendment 28

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

Text proposed by the Commission

Amendment

***(fc) compatibility of the exports of the
dual-use items or equipment with the
technical and economic capacity of the
recipient country, taking into account the
desirability that states meet their
legitimate security and defence needs with***

the least diversion of human and economic resources for armaments;

Justification

Necessary as this amendment is a logical expansion of the list in Article 14(1) which was already substantially changed in the Commission proposal.

Amendment 29

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

Text proposed by the Commission

Amendment

1 a. Member States shall not grant or shall revoke an individual or global export authorization or an authorisation for brokering services or technical assistance under this Regulation, if:

(a) there is a serious risk the items could be used to violate human rights;

(b) the legal framework or technical arrangements in the destination country fail to provide adequate safeguards against serious human rights abuse.

Justification

In case of documented serious violations of international human rights law or international humanitarian law, a denial or revocation of an export authorisation must be mandatory. The European Union must not enable human rights violations under any circumstances. It is legitimate to introduce the same logic of an obligation to issue denials as already in place in the context of export controls for conventional weapons where Member States shall deny export licences in case of inconsistency with Criterion One, Two, Three or Four of Common Position 2008/944/CFSP.

Amendment 30

**Proposal for a regulation
Article 14 – paragraph 2**

Text proposed by the Commission

Amendment

2. The Commission and the Council shall make available guidance and/or recommendations to ensure common risk

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.

assessments by the competent authorities of the Member States for the implementation of those criteria *when this Regulation enters into force.*

Justification

Necessary because guidelines are crucial interpretative tools for stakeholders.

Amendment 31

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 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. *Where imperative grounds of urgency require a removal or addition of specific products in Section B of Annex I, the procedure provided for in Article 17 shall apply to delegated acts adopted pursuant to this point.*

Justification

Necessary given the rapid changes in technology and the potential that new dangerous technologies arise that need to be added to the control list without delay.

Amendment 32

Proposal for a regulation

Article 16 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) The Commission may remove items from the list, in particular if in the course of the fast-changing technological environment the products meanwhile become a lower tier or mass product,

easily available or technically easily modifiable.

Justification

Necessary as this amendment is inextricably linked to Article 16(2)(b).

Amendment 33

Proposal for a regulation
Article 20 – paragraph 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 carried out in other Member States;

Amendment 34

Proposal for a regulation
Article 20 – paragraph 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;

Amendment 35

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

Text proposed by the Commission

Amendment

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

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

Justification

Necessary by reason of internal logic of the text. This amendment corresponds to amendments to Article 20(2)(a) and (b).

Amendment 36

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

Text proposed by the Commission

Amendment

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.

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, ***in particular SMEs***, brokers and transit operators resident or established in that Member State.

Amendment 37

**Proposal for a regulation
Article 27 – paragraph 1**

Text proposed by the Commission

Amendment

1. The Commission and the competent authorities of the Member States shall, where appropriate, maintain regular and reciprocal exchange of information with third countries.

1. The Commission and the competent authorities of the Member States shall, where appropriate, maintain regular and reciprocal exchange of information with third countries, ***including in the context of the dialogue on dual-use items provided***

*for in the Union's partnership and
cooperation agreements and strategic
partnership agreements.*

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast)
References	COM(2016)0616 – C8-0393/2016 – 2016/0295(COD)
Committee responsible Date announced in plenary	INTA 6.10.2016
Opinion by Date announced in plenary	AFET 6.10.2016
Rapporteur Date appointed	Marietje Schaake 23.1.2017
Date adopted	30.5.2017
Result of final vote	+ : 49 - : 10 0 : 6
Members present for the final vote	Michèle Alliot-Marie, Nikos Androulakis, Petras Auštrevičius, Mario Borghezio, Victor Boștinăru, Elmar Brok, Klaus Buchner, James Carver, Fabio Massimo Castaldo, Javier Couso Permuy, Andi Cristea, Arnaud Danjean, Georgios Epitideios, Knut Fleckenstein, Anna Elzbieta Fotyga, Eugen Freund, Michael Gahler, Iveta Grigule, Sandra Kalniete, Manolis Kefalogiannis, Janusz Korwin-Mikke, Andrey Kovatchev, Eduard Kukan, Ilhan Kyuchyuk, Ryszard Antoni Legutko, Sabine Lösing, Ulrike Lunacek, Andrejs Mamikins, Ramona Nicole Mănescu, David McAllister, Tamás Meszerics, Francisco José Millán Mon, Javier Nart, Pier Antonio Panzeri, Demetris Papadakis, Alojz Peterle, Tonino Picula, Julia Pitera, Cristian Dan Preda, Jozo Radoš, Jordi Solé, Jaromír Štětina, Dubravka Šuica, Charles Tannock, Miguel Urbán Crespo, Ivo Vajgl, Elena Valenciano, Geoffrey Van Orden, Anders Primdahl Vistisen, Boris Zala
Substitutes present for the final vote	Laima Liucija Andrikiienė, Angel Dzhambazki, Neena Gill, Ana Gomes, Marek Jurek, Antonio López-Istúriz White, David Martin, Norica Nicolai, Soraya Post, Marietje Schaake, Jean-Luc Schaffhauser, Igor Šoltes, Bodil Valero, Marie-Christine Vergiat, Željana Zovko

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

49	+
ALDE	Petras Auštrevičius, Iveta Grigule, Ilhan Kyuchyuk, Javier Nart, Norica Nicolai, Jozo Radoš, Marietje Schaake, Ivo Vajgl
EFDD	Fabio Massimo Castaldo
PPE	Michèle Alliot-Marie, Laima Liucija Andrikienė, Elmar Brok, Arnaud Danjean, Michael Gahler, Sandra Kalniete, Manolis Kefalogiannis, Andrey Kovatchev, Eduard Kukan, Antonio López-Istúriz White, David McAllister, Francisco José Millán Mon, Ramona Nicole Mănescu, Alojz Peterle, Julia Pitera, Cristian Dan Preda, Željana Zovko, Jaromír Štětina, Dubravka Šuica
S&D	Nikos Androulakis, Victor Boştinaru, Andi Cristea, Knut Fleckenstein, Eugen Freund, Neena Gill, Ana Gomes, Andrejs Mamikins, David Martin, Pier Antonio Panzeri, Demetris Papadakis, Tonino Picula, Soraya Post, Elena Valenciano, Boris Zala
VERTS/ALE	Klaus Buchner, Ulrike Lunacek, Tamás Meszerics, Jordi Solé, Bodil Valero, Igor Šoltes

10	-
ECR	Angel Dzhambazki, Anna Elżbieta Fotyga, Marek Jurek, Ryszard Antoni Legutko, Charles Tannock, Geoffrey Van Orden, Anders Primdahl Vistisen
EFDD	James Carver
ENF	Jean-Luc Schaffhauser
NI	Georgios Epitideios

6	0
ENF	Mario Borghezio
GUE/NGL	Javier Couso Permuy, Sabine Lösing, Miguel Urbán Crespo, Marie-Christine Vergiat
NI	Janusz Korwin-Mikke

Key to symbols:

+ : in favour

- : against

0 : abstention

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast)		
References	COM(2016)0616 – C8-0393/2016 – 2016/0295(COD)		
Date submitted to Parliament	28.9.2016		
Committee responsible Date announced in plenary	INTA 6.10.2016		
Committees asked for opinions Date announced in plenary	AFET 6.10.2016		
Rapporteurs Date appointed	Klaus Buchner 12.10.2016		
Discussed in committee	28.2.2017	3.5.2017	20.6.2017
Date adopted	23.11.2017		
Result of final vote	+: 34	–: 1	0: 2
Members present for the final vote	William (The Earl of) Dartmouth, Laima Liucija Andrikienė, Maria Arena, Daniel Caspary, Salvatore Cicu, Santiago Fisas Ayxelà, Karoline Graswander-Hainz, Heidi Hautala, Nadja Hirsch, France Jamet, Jude Kirton-Darling, David Martin, Emmanuel Maurel, Emma McClarkin, Anne-Marie Mineur, Alessia Maria Mosca, Artis Pabriks, Franck Proust, Godelieve Quisthoudt-Rowohl, Viviane Reding, Inmaculada Rodríguez-Piñero Fernández, Tokia Saïfi, Marietje Schaake, Helmut Scholz, Joachim Schuster, Joachim Starbatty, Adam Szejnfeld, Jan Zahradil		
Substitutes present for the final vote	Reimer Böge, Klaus Buchner, Nicola Danti, Edouard Ferrand, Bolesław G. Piecha, Frédérique Ries, Jarosław Wałęsa		
Substitutes under Rule 200(2) present for the final vote	Merja Kyllönen, Marco Zullo		

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

34	+
ALDE	Frédérique Ries, Marietje Schaake, Nadja Hirsch
ECR	Bolesław G. Piecha, Emma McClarkin, Jan Zahradil, Joachim Starbatty
EFDD	Marco Zullo
GUE/NGL	Anne-Marie Mineur, Helmut Scholz, Merja Kyllönen
PPE	Adam Szejnfeld, Artis Pabriks, Daniel Caspary, Franck Proust, Godelieve Quisthoudt-Rowohl, Jarosław Wałęsa, Laima Liucija Andrikienė, Reimer Böge, Salvatore Cicu, Santiago Fisas Aixelà, Tokia Saïfi, Viviane Reding
S&D	Alessia Maria Mosca, David Martin, Emmanuel Maurel, Inmaculada Rodríguez-Piñero Fernández, Joachim Schuster, Jude Kirton-Darling, Karoline Graswander-Hainz, Maria Arena, Nicola Danti
VERTS/ALE	Heidi Hautala, Klaus Buchner

1	-
EFDD	William (The Earl of) Dartmouth

2	0
ENF	Edouard Ferrand, France Jamet

Key to symbols:

+ : in favour

- : against

0 : abstention