



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 November 2012

15611/12

**Interinstitutional File:
2011/0310 (COD)**

**CODEC 2523
COMER 221
PESC 1326
CONOP 165
ECO 131
UD 260
ATO 148
PE 485**

INFORMATION NOTE

from: General Secretariat
to: Permanent Representatives Committee/Council
Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No. 428/2009 setting up a Community Regime for the control of exports, transfer, brokering and transit of dual use items - Outcome of the European Parliament's first reading (Strasbourg, 22 to 23 October 2012)

I. INTRODUCTION

The Rapporteur, Mr Christofer FJELLNER (EPP/SE), presented a report consisting of three amendments (amendments 1-3) on behalf of the Committee on International Trade.

In addition:

- the EPP political group submitted two amendments (amendment 4 rev and 5 rev);
- the S&D, ALDE, Greens/EFA and EUL/NGL political groups jointly submitted four amendments (amendments 6 and 7, 9 and 10);

- the S&D and EUL/NGL political groups jointly submitted one amendment (amendment 8);
- the S&D, ALDE and EUL/NGL political groups jointly submitted five amendments (amendments 11 - 15), and
- the S&D and ALDE political groups jointly submitted three amendments (amendments 16 - 18).

II. DEBATE

The Rapporteur opened the debate, which took place on 23 October 2012 and:

- noted that the aim of the proposed Regulation is to adapt to technical changes in current trade practices and to speed up the internal EU procedures by using delegated acts. He fully supported the Commission proposal.
- stressed that this proposal should be adopted very quickly in order to avoid needing to apply the old procedure to the list of goods established in 2011.
- argued that further issues, such as cybersafety, should not be dealt with in this report, but should wait until the Commission will come up with a proposal very soon.

Commissioner Karel DE GUCHT:

- observed that the current proposal serves a several purposes: it aims at making the EU more efficient in preventing the risk of proliferation of weapons of mass destruction and of the military use of civilian items, while also ensuring that the EU complies with its international commitments in this respect and defending its security;
- stated, that the proposal will help to foster EU competitiveness by making sure that our export control system does not hamper legitimate trade in critical sectors of our economy;
- stressed that in order to achieve the goals, it is proposed to delegate to the Commission the competence to update the list of controlled items in the Regulation governing the European dual-use export control system, including Annex II to the dual-use export control regime, which relaxes controls of certain low-risk items destined to certain low-risk areas;

- noted that the current proposal should concentrate on the revision of the legislative procedure which is too onerous and not suitable. It should lead to a quasi-automatic transposition of internationally-agreed controls into EU law;
- concluded by reminding the plenary that an ongoing and wide-ranging review of the EU export control regime has been launched, which offers the appropriate setting to discuss issues that are outside the scope of the proposed Regulation.

Speaking on behalf of the EPP political group, Mr Daniel CASPARY (EPP/DE):

- supported the Commission's proposal and the changes to the procedure which would make the system more flexible in order to react to international agreements.
- noted that the only disagreement at that stage is the question of whether to control the export ex-ante or ex-post. He stressed that the new regime should not put European companies at a disadvantage in relation to their global competitors, provided the goods and the destination appear on the list, in which case the export of the good is legally authorised. The aim of the proposed Regulation is to create an effective export control regime in the EU.

Speaking on behalf of the S&D political group, Mr Jörg LEICHTFRIED (S&D/AT):

- spoke in favour of ex-ante controls, in order to make sure that civilian goods which could also be used for killing people are controlled before the export takes place;
- noted that the European Parliament should rather be strict about ex-ante controls than acting in favour of the profit of European companies.

Speaking on behalf of the ALDE political group, Ms Marijetje SCHAAKE (ALDE/NL):

- raised the issue of technologies. She warned that, for example, IT technology which can be used to repress people and even put their lives in danger often comes from Europe;
- spoke against exporting technologies that can be used to attack the EU itself.

Speaking on behalf of the Green/ EFA political group, Ms Franziska KELLER (Greens/EFA/DE):

- also warned against the export of IT technology which is used in authoritarian regimes to oppress people and to commit violations of human rights;
- expressed concerns that the Commission supports the export of goods which are "innovative and competitive in the area of the security industry", in order to help European industry sell its products in the world;
- spoke against such support as the EU would thereby sell outhuman rights in the interest of the profit of EU companies.

Speaking on behalf of the EFD political group, the Earl of DARTMOUTH (EFD/UK) criticised that the European Commission would get more competence and will control the exports of the UK.

III. VOTE

On 23 October 2012, the Parliament adopted twelve amendments (amendments 1-3, 4 rev and 11 - 18) to the Commission's proposal which is set out, as thus amended, in the annex to this note.

Community regime for the control of exports, transfer, brokering and transit of dual-use items *I**

European Parliament legislative resolution of 23 October 2012 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (COM(2011)0704 – C7-0395/2011 – 2011/0310(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0704),
 - 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 (C7-0395/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on International Trade (A7-0231/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation Recital 9

Text proposed by the Commission

(9) The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Amendment

(9) The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and *to the* Council. ***The Commission should provide full information and documentation on its meetings with national experts within the framework of its work on the preparation and implementation of delegated acts. In this respect, the Commission should ensure that the European Parliament is duly involved, drawing on best practices from previous experience in other policy areas in order to create the best possible conditions for future scrutiny of delegated acts by the European Parliament.***

Amendment 11

Proposal for a regulation Article 1 – point -1 (new) Regulation (EC) No 428/2009 Article 4 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

-1. In Article 4, the following paragraph is inserted:

"3a. An authorisation shall also be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the authorities referred to in points 1 and 2 or by the Commission that the items in question are or may be intended, in their entirety or in part, for use in connection with a violation of human rights, democratic principles or freedom of speech as defined by the Charter of Fundamental Rights of the European Union, by using interception

technologies and digital data transfer devices for monitoring mobile phones and text messages and targeted surveillance of internet use (e.g. via monitoring centres or lawful interception gateways)."

Amendment 12

Proposal for a regulation

Article 1 – point -1 a (new)

Regulation (EC) No 428/2009

Article 4 – paragraph 6

Text proposed by the Commission

Amendment

-1a. In Article 4, paragraph 6 is replaced by the following:

"6. A Member State which imposes an authorisation requirement, in application of paragraphs 1 to 5, on the export of a dual use item not listed in Annex I, shall, where appropriate, inform the other Member States and the Commission. The other Member States shall give all due consideration to this information, shall inform their customs administration and other relevant national authorities and impose the same authorisation requirement."

Amendment 13

Proposal for a regulation

Article 1 – point -1 b (new)

Regulation (EC) No 428/2009

Article 5 – paragraph 2

Text proposed by the Commission

Amendment

-1b. In Article 5, paragraph 2 is replaced by the following:

"2. A Member State may extend the application of paragraph 1 to non-listed dual-use items for uses referred to in Article 4(1) and to dual-use items for military end use and destinations"

referred to in Article 4(2), (3) and (3a)."

Amendment 14

Proposal a regulation

Article 1 – point -1 c (new)

Regulation (EC) No 428/2009

Article 5 – paragraph 3

Text proposed by the Commission

Amendment

-1c. In Article 5, paragraph 3 is replaced by the following:

"3. A Member State may adopt or maintain national legislation imposing an authorisation requirement on the brokering of dual-use items, if the broker has grounds for suspecting that these items are or may be intended for any of the uses referred to in Article 4(1) and (3a)."

Amendment 15

Proposal for a regulation

Article 1 – point -1 e (new)

Regulation (EC) No 428/2009

Article 6 – paragraph 3

Text proposed by the Commission

Amendment

-1e. In Article 6, paragraph 3 is replaced by the following:

"3. A Member State may extend the application of paragraph 1 to non-listed dual-use items for uses referred to in Article 4(1) and to dual-use items for military end use and destinations referred to in Article 4(2) and (3a)."

Amendment 16

Proposal for a regulation

Article 1 – point -1 f (new)

Regulation (EC) No 428/2009

Article 8 – paragraph 1

Text proposed by the Commission

Amendment

-1f. In Article 8, paragraph 1 is replaced by the following:

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

Amendment 4/rev

Proposal for a regulation

Article 1 – point 1

Regulation (EC) No 428/2009

Article 9 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The Commission shall be empowered to adopt delegated acts in accordance with Article 23a ***concerning the removal of destinations and items*** from the scope of ***EU*** General Export Authorisations ***included in Annex II***.

In order to ensure that only low-risk transactions are covered by the EU General Export Authorisations included in Annex II, the Commission shall be empowered to adopt delegated acts in accordance with Article 23a ***to remove destinations*** from the scope of ***those*** General Export Authorisations ***if such destinations become subject to an arms embargo as referred to in Article 4(2)***.

Amendment 18

Proposal for a regulation

Article 1 – point 1 a (new)

Regulation (EC) No 428/2009

Article 15 – paragraph 1

Text proposed by the Commission

Amendment

1a. In Article 15, paragraph 1 is replaced by the following:

"1. The list of dual-use items set out in Annex I shall be updated in conformity with the relevant obligations and commitments, and any modification thereof, that Member States have accepted as members of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties, as well as in conformity with any restrictive measure adopted based on Article 215 TFEU."

Amendment 2

Proposal for a regulation

Article 1 – point 2

Regulation (EC) No 428/2009

Article 15 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 23a concerning updating the list of dual-use items set out in Annex I. The updating of Annex I shall be performed within the scope set out in paragraph 1.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 23a concerning updating the list of dual-use items set out in Annex I. The updating of Annex I shall be performed within the scope set out in paragraph 1. ***Where the updating of Annex I concerns dual-use items which are also listed in Annexes IIa to IIg or IV, those Annexes shall be amended accordingly.***

Amendment 3

Proposal for a regulation

Article 1 – point 3

Regulation (EC) No 428/2009

Article 23a – paragraph 2

Text proposed by the Commission

2. The ***delegation of*** power referred to in Articles 9(1) and 15(3) shall be conferred for ***an indeterminate*** period of ***time*** from ***the date of entry into force of Regulation (EU) No/... [this Regulation]***.

Amendment

2. The power ***to adopt delegated acts*** referred to in *Article* 9(1) and *Article* 15(3) shall be conferred ***on the Commission*** for a period of ***five years*** from ...^{*}. ***The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five- year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.***

^{*} ***OJ: Please insert the date of entry into force of the amending Regulation.***