

Control of exports, brokering, technical assistance, transit and transfer of dual-use items

2016/0295(COD) - 28/09/2016 - Legislative proposal

PURPOSE: to set up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast).

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: Parliament decides in accordance with the ordinary legislative procedure on an equal footing with Council.

BACKGROUND: [Regulation \(EC\) No 428/2009](#) set up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. The Commission presented in October 2013 [a report](#) to the European Parliament and to the Council on the implementation of the Regulation. The report concluded that the EU export control system provides solid legal and institutional foundations but the system must be upgraded in order to face new challenges.

In April 2014, the Commission adopted [a communication](#) setting out concrete policy options for the review of the EU export control regime and its adaptation to rapidly changing technological, economic and political circumstances.

In 2015, the Commission conducted an impact assessment of the review options outlined in that communication. As part of the impact assessment, the Commission conducted a public consultation, from which it emerged that stakeholders generally agreed that a review of current rules would improve the export control system, in particular with regards to its capacity to address evolving security risks such as the proliferation of weapons of mass destruction and terrorism and to respond to rapid scientific and technological developments.

The export control policy review has been identified as an initiative under the regulatory fitness and performance programme (REFIT). Council Regulation (EC) No 428/2009 has been amended on several occasions. Since further amendments are to be made, it should be recast in the interests of clarity and readability.

IMPACT ASSESSMENT: besides the baseline scenario (no policy change), the impacts of four other scenarios were assessed. A combination of the options "EU system upgrade" (adjustments to the regulatory framework), and "EU system modernisation" (focusing on cyber-surveillance Technologies and human rights) was retained as the preferred solution.

CONTENT: the proposal to recast Regulation (EC) No 428/2009 aims to set up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items. The main points are as follows;

Control provisions: the proposal:

- contains amendments to key export control notions: the definition of dual-use items is thus revised to reflect the emergence of new types of dual-use items, such as cyber-surveillance technologies. The proposal also clarifies that controls apply to natural persons, who may be "exporters", especially when it comes to technology transfers;
- clarifies controls on and facilitates intangible technology transfers, as they only become subject to control when the dual-use technology is made available to a person in a third country;
- clarifies controls applicable to technical assistance involving a cross-border movement;
- strengthens brokering controls, (i) by extending the definition of the broker to subsidiaries of EU companies outside of the EU, as well as to brokering services supplied by third country nationals from within the EU territory; (ii) by harmonising their application to non-listed items and military end-uses and extending their application to terrorism and human rights violations;
- harmonises the application of transit controls to non-listed items and military end-uses, and extends controls to the risk of misuse for terrorist acts and human rights violations;
- puts in place certain controls an anti-circumvention clause to combat trafficking in items of dual usage.

EU licensing: the proposal:

- provides for a definition of authorisations and for common licensing parameters (e.g. validity period) and conditions for use of the EU general authorisations and for global licences;
- establishes a new authorisation for 'large-projects' for certain large multiannual projects e.g. construction of a nuclear power plant;
- introduces new general authorisations regarding encryption and low value shipments to facilitate trade while ensuring a sufficient level of security through robust control modalities (e.g. registration, notification and reporting, and auditing);
- introduces a general authorisation on intra-company transfers of dual-use technology in non-sensitive countries, in particular for research and development purposes, as long as the technology remains under the ownership or control of the parent company.

Convergence of catch-all controls: the proposal provides for a clarification and harmonisation of the definition and scope of catch-all controls to ensure their uniform application across the EU.

Re-evaluation of intra-EU transfers: the proposal revises the list of items subject to control within the EU in order to focus controls on an updated list of most sensitive items, taking account of technological and commercial developments;

Control of exports of cyber-surveillance technologies: the proposal sets out new provisions for an effective control focusing on specific and relevant cyber-surveillance technologies. It introduces an EU autonomous list of specific cyber-surveillance technologies of concern to be subject to controls (monitoring centres and data retention systems), with detailed technical parameters.

Enhanced cooperation: the proposal provides for enhanced information exchange between competent authorities and the Commission with a view to support effective and consistent application of controls. It introduces a legal basis regarding the introduction of electronic licensing systems and their interconnection with the Dual-Use Electronic System, and for the setting up of 'technical expert groups' bringing together key

industry and government experts into a dialogue on the technical parameters for controls.

Transparency and outreach: the proposal sets out transparency measures and expands outreach and information-sharing with operators in order to develop a "partnership with the private sector".

Dialogue with third countries: the proposal provides a basis for the development of regular dialogues between the EU and key trade partners, and for the negotiation of mutually beneficial measures such as end-user verification programmes (whereby selected third-country companies could be granted special status of "Verified end-user" and obtain EU-wide recognition and facilitation of controls).

BUDGETARY IMPLICATIONS : some specific provisions in the proposal are expected to have implications on the resources of relevant services at EU or national levels, in particular ;

- extended competence for the Commission to amend lists of dual-use items and general export authorisations by delegated acts ;
- cyber-surveillance controls expected to require some additional administrative costs (staff) for administrations, both at national and EU level;
- the realisation of certain actions such as the development of electronic licensing systems while the financing and budgetary implications remain to be assessed in detail before any decision is taken regarding their implementation.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the EU.