



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Foreign Affairs

2008/0249(COD)

12.5.2010

DRAFT OPINION

of the Committee on Foreign Affairs

for the Committee on International Trade

on the proposal for a Council Regulation amending Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology
(COM(2008)0854 – C7-0062/2010 – 2008/0249(COD))

Rapporteur: Reinhard Bütikofer

PA_Legam

SHORT JUSTIFICATION

The Commission presented to the EP and the Council a proposal to amend the EU regime for the control of exports of dual-use items and technology. According to the Commission, the draft proposal covers six new EU General Export Authorisations (GEAs) for certain non-sensitive dual-use items to certain non-sensitive countries.

Dual-use items (including software and technology) are civil items which can be used for military purposes, subject to control when they are to be exported from the EU. These controls are designed in particular to prevent the proliferation of weapons of mass destruction.

To ensure that such control is fully effective and complies with Member States' commitments at multilateral level, authorisation is required under Article 3 of Regulation (EC) No 1334/2000 for export of the dual-use items listed in Annex I.

There are four types of export authorisations referred to in Article 6 of Regulation (EC) No 1334/2000.

GEA No EU001, as referred to in Article 6 of Regulation 1334/2000, covers most of the exports of controlled items to seven countries (United States of America, Canada, Japan, Australia, New Zealand, Switzerland and Norway).

For all other exports for which an authorisation is required under the Regulation, it leaves to the national authorities the final decision as to whether to grant a national general, global or individual export licence (Article 6(2)).

This draft opinion is focused only on the Commission's proposal from 2008 and leaves it up to the main committee to take into account the correlation between the final EP position and the recast version of the Regulation from 2009.¹

In general, the drafts person does support the Commission's proposal to improve transparency, verification of implementation of current rules as well as common use of the same standards.

However, the drafts person does not agree with the evaluation of the Commission which states that different regulatory treatments of certain exports in EU Member States do not serve the best interests of the EU as a whole.

In fact, some Member States apply stricter export controls of dual-use items than others. In order to improve international security in line with its WMD Non-proliferation strategy as well as the Instrument for Stability and Common Position on Control of Arms Exports, the EU should be aiming at application of strictest export regimes on each of the items, applicable to all of its Member States.

In addition to the amendments tabled below, the drafts person retains the right to suggest other amendments including a possible rejection of the whole proposal, sharing serious concerns of

¹ 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 (Recast)

the Council of the EU, over its possible negative impact on Union's internal and external security objectives. Therefore, the opinion of the Foreign Affairs Committee should take an approach at least as strict as the EU Member States with the strictest export control regime.

The draftsman takes the view that in absence of credible data on end-use of the dual-use items exported from the Union, the EU must apply a reasoned and cautious approach.

In this regard, the draftsman calls on the Commission and the Council to compile the relevant data from their customs and other authorities.

AMENDMENTS

The Committee on Foreign Affairs calls on the Committee on International Trade, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation Annex IIb

Text proposed by the Commission

Amendment

ANNEX

Annex IIb is deleted

“ANNEX IIb

COMMUNITY GENERAL EXPORT AUTHORISATION No EU002 Low Value Shipments

Or. en

Justification

The draftsman takes the view that the categorisation of these items as non-sensitive is incorrect, therefore cannot be included in the EU general export authorisations.

Amendment 2

Proposal for a regulation Annex IIc - Part 3 - paragraph 2 - subparagraph 4

Text proposed by the Commission

Amendment

(4) *for an essentially identical transaction*
where the initial authorisation has been

(4) *when* the initial authorisation has been
annulled, suspended, modified or revoked.

revoked.

Or. en

Justification

The proposed wording is more encompassing

Amendment 3

Proposal for a regulation

Annex IIc - Part 3 - paragraph 2 - subparagraph 4 a (new)

Text proposed by the Commission

Amendment

4a. when the end use of the items in question is different from that specified in the original export authorisation.

Or. en

Justification

The proposed wording is aimed at stricter limitation of the proposed authorisation.

Amendment 4

Proposal for a regulation

Annex IIc - Part 3 - paragraph 3 - subparagraph 2

Text proposed by the Commission

Amendment

(2) provide customs officers, if so requested, with documentary evidence of the date of importation of the goods into the European Community, of any repairs to the goods carried out in the European Community and of the fact that the items are being returned to the **person** and the country from which they were imported into the European Community.

(2) provide customs officers, if so requested, with documentary evidence of the date of importation of the goods into the European Community, of any repairs to the goods carried out in the European Community and of the fact that the items are being returned to the **end user** and the country from which they were imported into the European Community.

Or. en

Justification

The drafts person's proposal is more specific.

Amendment 5

Proposal for a regulation

Annex IIc - Part 3 - paragraph 4

Text proposed by the Commission

4. Any exporter who uses this authorisation must notify the competent authorities of the Member State where he is established (as defined in Article 6(6)) of first use of **the** authorisation ***no later than 30 days after*** the date when the first export takes place.

Amendment

4. Any exporter who uses this **general** authorisation must notify the competent authorities of the Member State where he is established (as defined in Article 6(6)) **and the Commission** of **the** first use of **this** authorisation **prior to** the date when the first export takes place.

Reporting requirements attached to the use of this authorisation and the additional information that the Member State from which the export is made shall require on items exported under this authorisation are defined by Member States.

A Member State shall require the 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 of the registration request.

Where applicable the requirements set out in the second and third subparagraphs of this paragraph shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

Any exporter who uses this general authorisation shall every six months inform the relevant national authority of

the Member State where he is established and the Commission of the quantity, value and destination of each item exported. This information shall include a description of the items exported along with the relevant control list reference as set out in Annex 1 of this Regulation.

The Commission shall publish the information notified to it in the C series of the Official Journal of the European Union

Or. en

Justification

This amendment introduces an ex-ante notification and registration requirement to the Member States and the Commission, thus raising transparency.

Amendment 6

Proposal for a regulation

Annex II d - Part 3 - paragraph - 1 a (new)

Text proposed by the Commission

Amendment

-1a. This general authorisation authorises the export of items listed in Part 1 on condition that the export concerns temporary export for exhibition or fair and that the items are to be re-imported within a period of 120 days after the initial export , complete and without modification, into the customs territory of the European Union.

Or. en

Justification

This amendment sets a new condition to re-import the items in question within a certain period.

Amendment 7

Proposal for a regulation

Annex IId - Part 3 - paragraph 1 - subparagraph 4 a (new)

Text proposed by the Commission

Amendment

(4a) where their return, in their original state, without the removal, copying or dissemination of any component or software, cannot be guaranteed by the exporter, or where a transfer of technology is connected with a presentation;

Or. en

Justification

This amendment introduces an additional safeguard for export authorisation.

Amendment 8

Proposal for a regulation

Annex IId - Part 3 - paragraph 1 - subparagraph 4 b (new)

Text proposed by the Commission

Amendment

(4b) where the relevant items are to be exported for a private presentation or demonstration (e.g. in in-house showrooms);

Or. en

Justification

This amendment introduces an additional safeguard for export authorisation.

Amendment 9

Proposal for a regulation

Annex IId - Part 3 - paragraph 1 - subparagraph 4 c (new)

Text proposed by the Commission

Amendment

(4c) where the relevant items are to be merged into any production process;

Or. en

Justification

This amendment introduces an additional safeguard for export authorisation.

Amendment 10

Proposal for a regulation

Annex IId - Part 3 - paragraph 1 - subparagraph 4 d (new)

Text proposed by the Commission

Amendment

(4d) where the relevant items are to be used for their intended purpose, except to the minimum extent required for effective demonstration, but without making specific test outputs available to third parties;

Or. en

Justification

This amendment introduces an additional safeguard for export authorisation.

Amendment 11

Proposal for a regulation

Annex II d - Part 3 - paragraph 1 - subparagraph 4 e (new)

Text proposed by the Commission

Amendment

(4e) where the export is to take place as a result of a commercial transaction, in particular as regards the sale, rental or lease of the relevant items;

Or. en

Justification

This amendment introduces an additional safeguard for export authorisation.

Amendment 12

Proposal for a regulation

Annex II d - Part 3 - paragraph 1 - subparagraph 4 f (new)

Text proposed by the Commission

Amendment

(4f) where the relevant items are to be stored at an exhibition or fair only for the purpose of sale, rent or lease, without being presented or demonstrated;

Or. en

Justification

This amendment introduces an additional safeguard for export authorisation.

Amendment 13

Proposal for a regulation

Annex II d - Part 3 - paragraph 1 - subparagraph 4 g (new)

Text proposed by the Commission

Amendment

(4g) where the exporter makes any arrangement which would prevent him from keeping the relevant items under his control during the whole period of the temporary export.

Or. en

Justification

This amendment introduces an additional safeguard for export authorisation.

Amendment 14

Proposal for a regulation Annex II d - Part 3 - paragraph 3

Text proposed by the Commission

Amendment

3. Any exporter who uses this general authorisation must notify the competent authorities of the Member State where he is established (as defined in Article 6(6)) of the first use of this authorisation no later than 30 days after the date when the first export takes place.

3. Any exporter who uses this general authorisation must notify the competent authorities of the Member State where he is established (as defined in Article 6(6)) ***and the Commission*** of the first use of this authorisation ***prior to*** the date when the first export takes place.

Reporting requirements attached to the use of this authorisation and the additional information that the Member State from which the export is made shall require on items exported under this authorisation are defined by Member States.

A Member State shall require the 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.

Where applicable the requirements set out

in the second and third subparagraphs of this paragraph shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

Any exporter who uses this general authorisation shall every six months inform the relevant national authority of the Member State where he is established and the Commission of the quantity, value and destination of each item exported. This information shall include a description of the items exported along with the relevant control list reference as set out in Annex 1 of this Regulation.

The Commission shall publish the information notified to it in the C series of the Official Journal of the European Union.

Or. en

Justification

This amendment introduces an ex-ante notification and registration requirement to the Member States and the Commission, thus raising transparency.

Amendment 15

Proposal for a regulation Annex II d - Part 3 - paragraph 4

Text proposed by the Commission

4. For the purpose of this authorisation, “exhibition” means any trade or industrial exhibition, fair or similar public show or display which is not organised for private purposes in shops or business premises with a view to the sale of foreign products, during which the products remain under customs control.

Amendment

4. For the purpose of this authorisation, “exhibition *or fair*” means any trade or industrial exhibition, fair or similar public show or display which is not organised for private purposes in shops or business premises with a view to the sale of foreign products, during which the products remain under customs control.

Or. en

Justification

The amendment introduces consistency with the wording of the title of the draft Annex as proposed by the Commission.

Amendment 16

**Proposal for a regulation
Annex IIe**

Text proposed by the Commission

Amendment

Annex IIe is deleted.

Or. en

Justification

The draftsperson is of the view that computers and related equipment are sensitive items, therefore cannot be included in the EU general export authorisations.

Amendment 17

**Proposal for a regulation
Annex IIe - Part 3 - paragraph 1 - subparagraph 1 - point c a (new)**

Text proposed by the Commission

Amendment

(ca) for the launching of cyber -attacks;

Or. en

Justification

This amendment is intended to prohibit export authorisations of items that could be used for launching of cyber-attacks.

Amendment 18

Proposal for a regulation

Annex IIf - Part 3 - paragraph 1 - subparagraph 1 - point c b (new)

Text proposed by the Commission

Amendment

(cb) for use in connection with a violation of human rights, democratic principles or freedom of speech.

Or. en

Justification

General export authorisations should not be given to items that can be used by governments to violate human rights or freedom of speech.

Amendment 19

Proposal for a regulation

Annex IIf - Part 3 - paragraph 1 - subparagraph 2

Text proposed by the Commission

Amendment

(2) where the exporter is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in ***Articles 4(1) and 4(2)***.

(2) where the exporter is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in ***subparagraph 1***;

Or. en

Justification

The amendment extends the conditions of export authorisation in comparison to the reference to Article 4 (paragraphs 1 and 2).

Amendment 20

Proposal for a regulation

Annex IIf - Part 3 - paragraph 1 - subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) where the items will be re-exported to any destination other than those listed in Part 2 of this authorisation, those listed in Part 2 of Annex IIa or to EU Member States.

Or. en

Justification

This amendment introduces an additional safeguard for export authorisation.

Amendment 21

Proposal for a regulation

Annex IIf - Part 3 - paragraph 3 - subparagraph 1

Text proposed by the Commission

Amendment

(1) ***inform*** the competent authorities of the Member State where he is established (as defined in Article 6(6)) of first use of ***the*** authorisation ***no later than 30 days after*** the date of first export;

(1) ***notify*** the competent authorities of the Member State where he is established (as defined in Article 6(6)) ***and the Commission*** of ***the*** first use of ***this*** authorisation ***prior to*** the date of first export.

Reporting requirements attached to the use of this authorisation and the additional information that the Member State from which the export is made shall require on items exported under this authorisation are defined by Member States.

A Member State shall require the 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.

Where applicable the requirements set out in the second and third subparagraphs of this paragraph shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

Any exporter who uses this general authorisation shall every six months inform the relevant national authority of the Member State where he is established and the Commission of the quantity, value and destination of each item exported. This information shall include a description of the items exported along with the relevant control list reference as set out in Annex 1 of this Regulation.

The Commission shall publish the information notified to it in the C series of the Official Journal of the European Union.

Or. en

Justification

This amendment introduces an ex-ante notification and registration requirement to the Member States and the Commission, thus raising transparency.

Amendment 22

Proposal for a regulation

Annex IIg - Part 3 - paragraph 1 - subparagraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) where the items will be re-exported to any destination other than those listed in the Part 2 of this authorisation, those listed in Part 2 of Annex IIa or to EU Member States.

Justification

This amendment introduces an additional safeguard for export authorisation.

Amendment 23

Proposal for a regulation

Annex IIg - Part 3 - paragraph 1 - subparagraph 2

Text proposed by the Commission

(2) where ***the exporter is aware that*** the items in question are intended, in their entirety or in part, for any of the uses referred to in Articles 4(1) and 4(2).

Amendment

(2) where the items in question are intended, in their entirety or in part, for any of the uses referred to in Articles 4(1) and 4(2).

Or. en

Justification

This amendment introduces an additional safeguard for export authorisation.

Amendment 24

Proposal for a regulation

Annex - Draft Annex IIg - Part 3 - paragraph 4 - subparagraph 1

Text proposed by the Commission

(1) ***inform*** the competent authorities of the Member State where he is established (as defined in Article 6(6)) of first use of ***the*** authorisation ***no later than 30 days after*** the date of first export;

Amendment

(1) ***notify*** the competent authorities of the Member State where he is established (as defined in Article 6(6)) ***and the Commission of the*** first use of ***this*** authorisation ***prior to*** the date of first export.

Reporting requirements attached to the use of this authorisation and the additional information that the Member State from which the export is made shall

require on items exported under this authorisation are defined by Member States.

A Member State shall require the 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.

Where applicable the requirements set out in the second and third subparagraphs of this paragraph shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

Any exporter who uses this general authorisation shall every six months inform the relevant national authority of the Member State where he is established and the Commission of the quantity, value and destination of each item exported. This information shall include a description of the items exported along with the relevant control list reference as set out in Annex 1 of this Regulation.

The Commission shall publish the information notified to it in the C series of the Official Journal of the European Union.

Or. en

Justification

This amendment introduces an ex-ante notification and registration requirement to the Member States and the Commission, thus raising transparency.