



EUROPEAN PARLIAMENT

2009 - 2014

Plenary sitting

A7-0231/2012

12.7.2012

*****I**
REPORT

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))

Committee on International Trade

Rapporteur: Christofer Fjellner

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

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

CONTENTS

| | Page |
|---|-------------|
| DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION..... | 5 |
| EXPLANATORY STATEMENT..... | 8 |
| PROCEDURE..... | 11 |

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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 2

Proposal for a regulation

Article 1 - point 2

Regulation (EC) No 428/2009

Article 15 - paragraph 3

Text proposed by the Commission

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.

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. ***Where the updating of Annex I concerns dual-use items which are also listed in Annexes IIa-g 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 entry into force of this Regulation.***

Amendment

2. The delegation of power referred to in Articles 9(1) and 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 this Regulation.***

EXPLANATORY STATEMENT

The EU controls exports of items that are civilian in nature, but may be used for military purposes under the Regulation (EC) No 428/2009¹. Its Annex I contains the EU list of controlled items, reflecting decisions taken by consensus in international export control regimes². Controlled items may not leave the EU customs territory without an export authorisation³. General Export Authorisations listed in Annex II cover exports of certain lower-risk items to certain destinations.

Export control framework of dual-use goods and technologies serves dual purpose: it aims to limit the risk of proliferation and military use without hampering legitimate trade. Hence, it is vital to strike a fair balance between these concerns.

Updates of Regulation (EC) No 428/2009 governing European dual-use export control system and its annexes containing lists of controlled items and destinations are carried out via ordinary legislative procedure. This proposal aims to streamline procedures in the EU export control regime by introducing delegated acts for regular updates of Annex I and modifications of Annex II.

Streamlining Annex I updates

Rapid technological progress leads to constant review of international control lists of dual-use items. Although decisions of international export control regimes are legally non-binding, international commitments undertaken by Member States mean, that frequent updates to the EU dual-use export control list are required.

Simplification and acceleration of existing procedures is necessary for two main reasons. Security issues may arise due to delays in implementing decisions on tightening controls. In cases of international de-control, late implementation hurts competitiveness of European exporters, when third countries remove export controls quicker than the EU⁴.

Updates of Annex I are carried out in order to comply with international commitments, leading to quasi-automatic transposition of internationally-agreed dual use controls into the EU law. Under the existing rules, any update of Regulation (EC) No 428/2009 is carried out via ordinary legislative procedure.

It has proved to be a burdensome and lengthy process, whereas regular and timely updates are needed. Current revision of Annex I to include agreed changes of 2009 and 2010 was voted by the Parliament only in March 2012. Furthermore, in a cumbersome and complex legislative

¹ OJ L 134, 29.05.2009, p. 1.

² The Australia Group (AG) for biological and chemical items, the Nuclear Suppliers Group (NSG) for civil nuclear items, the Missile Technology Control Regime (MTCR) and the Wassenaar Arrangement (WA) for conventional arms and dual-use goods and technologies.

³ EU General Export Authorisation, national general export authorisation, global authorisation or individual licenses.

⁴ Exports of dual-use items account for 5-10% of all EU exports.

procedure of largely technical nature, Parliament has no genuine possibility to act as an amending institution.

As ordinary legislative procedure in this field proved to be not the most efficient means to an end, your rapporteur agrees that powers to update Annex I should be delegated to the Commission. This would allow reviewing the list of controlled items with a minimum delay, if required, as often as twice a year or even more frequently.

Swifter modifications of Annex II

Six existing types of EU General Export Authorisations¹ (GEAs listed in Annex II) cover lower risk "non-sensitive" exports of precisely defined items to specific destinations, under concrete conditions of use. This system allows exports of controlled items with shorter delay, without a need to obtain global or individual licences.

The EU should be able to swiftly react to rapidly changing international circumstances by removing certain countries or items from the scope of existing GEAs. Ability to timely modify Annex II in such cases is essential in order to ensure that only low-risk transactions take place. Facilitated exports should be urgently halted when security situation deteriorates.

Conclusions

The objective of the EU export control system is to ensure non-proliferation without restricting competition and competitiveness. Commission proposal is in line with the aim to ensure that EU control lists are updated with a minimum delay, enhancing speed and flexibility. This will allow rapid adaptation to changing external circumstances to both tackle emerging proliferation threats and ensure European industry is not left in competitive disadvantage.

It is an important step towards enhanced efficiency, transparency and proportionality that the future review of dual use system should bring, without compromising effectiveness of controls. Your rapporteur urges Commission to step up efforts developing Dual-use e-System and EU training programme on export controls, ensuring that SMEs remain competitive inside and outside of the single market. This should lead to the overall objective of simplifying the system and accelerating the processes in order to reduce the burden on exporters and authorities, enhance security and increasing competitiveness. Bearing in mind the importance of the dual-use industry, it is vital to ensure equal treatment of exporters.

Your rapporteur reiterates the call to enhance consistency of EU's policy within the international export control regimes of intergovernmental nature. In order to enforce its coordination and representation role and improve transparency, Commission should consider joining or at least acquiring observer status in control regimes to which it is not yet a member².

Your rapporteur underlines that the role of the Parliament is to provide the general

¹ Annexes IIa to IIc of Regulation (EC) No 428/2009.

² The Missile Technology Control Regime (MTCR) and the Wassenaar Arrangement (WA).

supervision of the EU export control policy rather than its "micromanagement". Success of the current European export control regime primarily depends on efforts of Member States, which must ensure proper enforcement of common legislation and block illegal export and transit of sensitive goods. The risk of unauthorised exports from the EU territory can be curtailed by stepping-up coordination both at state and inter-agency level (improved customs controls, cooperation of police, intelligence and prosecution services) and effective sanctions for dual-use export control violations.

In order to ensure horizontal approach to the regime of delegated acts set down in Article 290 of the Lisbon Treaty, your rapporteur suggests amendments to the text, bringing it in line with substantial elements of Parliament's position in the so-called "trade omnibuses".

PROCEDURE

| | | |
|---|---|-----------|
| Title | Amendment of Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items | |
| References | COM(2011)0704 – C7-0395/2011 – 2011/0310(COD) | |
| Date submitted to Parliament | 7.11.2011 | |
| Committee responsible Date announced in plenary | INTA 15.11.2011 | |
| Rapporteur(s) Date appointed | Christofer Fjellner 25.1.2012 | |
| Discussed in committee | 25.4.2012 | 20.6.2012 |
| Date adopted | 12.7.2012 | |
| Result of final vote | +: 15 | –: 4 |
| | 0: 10 | |
| Members present for the final vote | William (The Earl of) Dartmouth, John Attard-Montalto, Maria Badia i Cutchet, Nora Berra, David Campbell Bannerman, Daniel Caspary, María Auxiliadora Correa Zamora, Harlem Désir, Christofer Fjellner, Yannick Jadot, Metin Kazak, Franziska Keller, Bernd Lange, David Martin, Vital Moreira, Paul Murphy, Cristiana Muscardini, Franck Proust, Niccolò Rinaldi, Helmut Scholz, Peter Šťastný, Robert Sturdy, Gianluca Susta, Iuliu Winkler | |
| Substitute(s) present for the final vote | George Sabin Cutaş, Béla Glattfelder, Małgorzata Handzlik, Ioannis Kasoulides, Jörg Leichtfried | |
| Substitute(s) under Rule 187(2) present for the final vote | Martin Callanan | |
| Date tabled | 16.7.2012 | |