

11.1.2018

A8-0390/ 001-098

AMENDMENTS 001-098

by the Committee on International Trade

Report

Klaus Buchner

A8-0390/2017

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

Proposal for a regulation (COM(2016)0616 – C8-0393/2016 – 2016/0295(COD))

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 l.d.

Amendment 2

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) **Considering the emergence of** new

Amendment

(5) **Certain cyber-surveillance items**

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 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.

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 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 terrorism or human rights violations.**

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 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-surveillance technology.**

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 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

Text proposed by the Commission

Amendment

(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.

(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

(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 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

(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 **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 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.

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 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 acts.

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

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 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.

(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 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, **in particular to SMEs**, and transparency are essential elements for an effective export control regime. It is therefore appropriate 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

(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.

Amendment

(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 European Union, *notably the freedom to conduct business,*

Amendment

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

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

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***;

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 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

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;

Amendment

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

(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) ***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, 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

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

Amendment

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

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.

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**

Amendment

If objections are received from **at least**

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.

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 paragraph 2 of Article 24, and shall be accessible to the public.*

Amendment 39

Proposal for a regulation

Article 5 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. If a broker is aware that the dual-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 40

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 41

Proposal for a regulation Article 7 – paragraph 2

Text proposed by the Commission

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.

Amendment

If a supplier of technical assistance is 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 **paragraph 1 of 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 42

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 43

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

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

controls if exported from the Union. Relevant commercial documents include, in particular, any sales contract, order confirmation, invoice or dispatch note.

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 manufacture'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 44

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 45

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

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**

exported.

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 46

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 47

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 48

Proposal for a regulation

Article 10 – paragraph 4 – subparagraph 3 – point d

Text proposed by the Commission

Amendment

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

(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 49

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 50

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 51

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 52

Proposal for a regulation Article 11 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

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.

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 53

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

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 *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 54

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

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 ***and 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;***

members of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties;

Amendment 55

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 56

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 57

Proposal for a regulation

Article 14 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the internal situation in the country of

(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;

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 58

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 59

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 60

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 61

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 62

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 assessments by the competent authorities of the Member States for the implementation of those criteria.

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 63

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 64

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 65

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 66

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**

5. The Commission, in cooperation with the Member States, shall develop

guidance to support interagency cooperation between licensing and customs authorities.

guidelines to support interagency cooperation between licensing and customs authorities.

Amendment 67

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;

Amendment 68

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, 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, ***any*** reports of violations, seizures and the application of other penalties ;

Amendment 69

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 routes taken.

Amendment 70

Proposal for a regulation
Article 21 – paragraph 2

Text proposed by the Commission

Amendment

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

2. The Dual-Use Coordination Group shall, whenever it considers it to be necessary, consult exporters, brokers and other relevant stakeholders concerned by 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 71

Proposal for a regulation
Article 21 – paragraph 3

Text proposed by the Commission

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 Annex I. Technical expert groups shall, **where appropriate**, consult exporters, brokers and other relevant stakeholders concerned by

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.

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 72

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 73

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 74

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 75

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 76

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 77

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 78

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 79

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 80

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

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 **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), 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.

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).

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 81

Proposal for a regulation Annex I – Section B – title

Text proposed by the Commission

B. LIST OF *OTHER DUAL-USE ITEMS*

Amendment

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 82

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ea) 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 83

Proposal for a regulation

Annex II – Section A – 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 ***ten*** 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 84

Proposal for a regulation

Annex II – Section A – part 3 – paragraph 4

Text proposed by the Commission

Amendment

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.

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 85

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 86

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 87

Proposal for a regulation

Annex II – Section B – part 3 – paragraph 5 – 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 88

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 89

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 90

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 91

Proposal for a regulation

Annex II – Section D – part 3 – paragraph 7 – 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 92

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 93

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 94

Proposal for a regulation

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

Text proposed by the Commission

1. ***This*** authorisation authorises the transmission of the software and technology listed in Part 1 by any exporter resident or established in a Member State ***of the Union*** provided the item is ***only*** for use:

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

Amendment

1. ***That*** authorisation authorises the transmission of the software and technology listed in Part 1 by any ***company that is an*** exporter resident or established in a Member State ***to any sister company, subsidiary or parent company provided those entities are*** owned or controlled by the ***same parent company or are established in a Member State***, provided the item ***in question*** is for use ***for company cooperation projects including commercial product development, research, servicing, production and usage and, in the case of employees and order processors, pursuant to the agreement establishing the employment relationship.***

Justification

It is necessary to extend the authorisation not only to subsidiaries but also to parent and sister companies. Furthermore, it is appropriate to extend the authorisation to the full range of legitimate commercial activities in the Union.

Amendment 95

Proposal for a regulation

Annex II – Section H – part 3 – paragraph 1 – point 2

Text proposed by the Commission

(2) by ***employees of the exporter or of any entity owned or controlled by the exporter***

Amendment

deleted

Amendment 96

Proposal for a regulation

Annex II – Section H – part 3 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

in its or their own commercial product development activities and, in the case of employees, pursuant to the agreement establishing the employment relationship.

deleted

Amendment 97

Proposal for a regulation

Annex II – Section I – part 3 – paragraph 3 – subparagraph 1

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 98

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.

