



**2016/0295(COD)**

4.4.2017

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## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast)  
(COM(2016)0616 – C8-0393/2016 – 2016/0295(COD))

Committee on International Trade

Rapporteur: Klaus Buchner

(Recast – Rule 104 of the Rules of Procedure)

### ***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***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast)  
(COM(2016)0616 – C8-0393/2016 – 2016/0295(COD))**

**(Ordinary legislative procedure – recast)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0616),
  - 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 (C8-0393/2016),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>1</sup>,
  - having regard to the letter of 27 March 2017 from the Committee on Legal Affairs to the Committee on International Trade in accordance with Rule 104(3) of its Rules of Procedure,
  
  - having regard to Rules 104 and 59 of its Rules of Procedure,
  - having regard to the report of the Committee on International Trade and the opinion of the Committee on Foreign Affairs (A8-0000/2017),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the Commission proposal does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

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<sup>1</sup> OJ C 77, 28.3.2002, p. 1.

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## Amendment 1

### Proposal for a regulation

#### Recital 5

##### *Text proposed by the Commission*

(5) Considering the emergence of new 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.

##### *Amendment*

(5) Considering the emergence of new 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, 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 internet security research. The Commission, in close consultations with the Member States and stakeholders, ***should*** develop guidelines to support the practical applications of those controls ***without delay***.

Or. en

##### *Justification*

*Serious violations of human rights are committed outside of armed conflict or internal repression as well. The protection from these violations should not be limited to only these cases in the framework of export controls. Law enforcement might not be in any case a 'legitimate purpose' and therefore it should not be exclusively mentioned.*

## Amendment 2

### 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 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 ***should be publicly available and*** include considerations regarding their possible misuse in connection with acts of terrorism or human rights violations. ***In this regard, a technical working group should be set up, 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.***

Or. en

*Justification*

*Assessment criteria should be agreed upon in cooperation with all concerned stakeholders and they hence must be publicly available.*

## Amendment 3

### Proposal for a regulation Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) 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 UN 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;*

Or. en

#### *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 4**

##### **Proposal for a regulation Recital 8**

###### *Text proposed by the Commission*

(8) Considering that various categories of persons may be involved in the export of dual-use items, including natural persons such as service providers, researchers, consultants and persons transmitting dual-use items electronically, the definition of exporter, and its application to natural persons, should be clarified.

###### *Amendment*

(8) Considering that various categories of persons may be involved in the export of dual-use items, including natural persons such as service providers, researchers ***engaged in non-public activities***, consultants and persons transmitting dual-use items electronically, the definition of exporter, and its application to natural persons, should be clarified.

Or. en

#### *Justification*

*Above all legitimate digital security research should not be hindered. To that end, public research activities should not fall under the scope of export control given their importance for*



*the protection of human rights and in particular the right to privacy. In this regard, publicly available research is vital for consumer protection.*

## **Amendment 5**

### **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 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. ***Exchange of information should include support for the development of an independent data base and the gathering of information from the private sector, public institutions and civil society organisations.*** Targeted catch-all controls should also apply, under certain conditions, to the export of cyber-surveillance technology.

Or. en

##### *Justification*

*Information exchange of all concerned stakeholders is an important step in order to utilise expert knowledge; inform exporters about possible human rights violations in destination countries and problematic end users and to facilitate a coherent application of this Regulation.*

## **Amendment 6**

### **Proposal for a regulation**

#### **Recital 15**

##### *Text proposed by the Commission*

(15) Additional Union general export authorisations should be introduced in

##### *Amendment*

(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.***

order to reduce administrative burden on companies and authorities while ensuring an appropriate level of control of the relevant items to the relevant destinations.

Or. en

### *Justification*

*The category of “large projects” is first and foremost a tool to facilitate the export of nuclear power plants. Nuclear energy is by definition a dual use technology with considerable proliferation and security risks. This Regulation should therefore not facilitate its export.*

### **Amendment 7**

#### **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

##### *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 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.

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 sections 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;***

Or. en

### *Justification*

*Cryptography technology does not belong in the scope of dual use export controls.*

## **Amendment 8**

### **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

##### *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 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.

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 receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

Or. en

#### *Justification*

*Section B of Annex I should also be amendable by delegated acts.*

### **Amendment 9**

#### **Proposal for a regulation Recital 25**

##### *Text proposed by the Commission*

(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.

##### *Amendment*

(25) Outreach to the private sector and transparency are essential elements for an effective export control regime. It is therefore appropriate to provide **guidance without delay** 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.

Or. en

#### *Justification*

*The coherent implementation of this Regulation depends on a clear text and to a large degree on the availability of comprehensive guidance for exporters. This guidance must be available at the point of the entry into force of this Regulation.*

## Amendment 10

### 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 through the greater convergence of penalties applicable in the event of infringements 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.

Or. en

*Justification*

*The strife towards harmonisation between Member States should also include the convergence of applicable penalties.*

## Amendment 11

### 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 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 OECD, in order to establish***

*the list of dual-use 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.*

Or. en

#### *Justification*

*The creation of an EU autonomous list must go hand in hand with an active approach to establish this list as an international standard.*

### **Amendment 12**

#### **Proposal for a regulation**

#### **Recital 30**

##### *Text proposed by the Commission*

(30) It is appropriate to clarify that *this Regulation is without prejudice to the Commission Delegated Decision of 15 September 2015<sup>20</sup> supplementing Decision No 1104/2011/EU of the European Parliament and of the Council, which establishes specific rules for the control of the export of items for the Public Regulated Service (PRS) under the Galileo Programme.*

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<sup>20</sup> C(2015)6123 final.

##### *Amendment*

(30) It is appropriate to clarify that *the export of items for the Public Regulated Service (PRS) under the Galileo Programme is governed by the rules set out in this Regulation and in Council Common Position 2008/944/CFSP<sup>20</sup>*

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<sup>20</sup> **COUNCIL COMMON POSITION 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment**

Or. en

#### *Justification*

*A Regulation supersedes a delegated act in the hierarchy of norms.*

## Amendment 13

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 6 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

*For the purposes of this Regulation the sole provision of ancillary services is excluded from this definition. Ancillary services are transportation, financial services, insurance or re-insurance, or general advertising or promotion;* **deleted**

Or. en

#### *Justification*

*This exclusion is contradictory to the purpose of effective and comprehensive export controls and does also not contribute to the clarification and simplification of the scope of the Regulation.*

## Amendment 14

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 13

*Text proposed by the Commission*

*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 the duration of a specified project the realisation of which exceeds one year;* **deleted**

Or. en

#### *Justification*

*The category of “large projects” is first and foremost a tool to facilitate the export of nuclear power plants. Nuclear energy is by definition a dual use technology with considerable proliferation and security risks. This Regulation should therefore not facilitate its export.*

## Amendment 15

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 21 – introductory part

##### *Text proposed by the Commission*

21. 'cyber-surveillance technology' shall mean items specially designed to enable the covert intrusion into information and telecommunication systems with a view to monitoring, extracting, collecting and analysing data and/or incapacitating or damaging the targeted system. This includes items related to the following technology and equipment:

##### *Amendment*

21. 'cyber-surveillance technology' shall mean items, ***including hardware, software and technology, which are*** specially designed to enable the covert intrusion into information and telecommunication systems with a view to monitoring, extracting, collecting and analysing data and/or incapacitating or damaging the targeted system. This includes items related to the following technology and equipment:

Or. en

##### *Justification*

*This clarification establishes that cyber-surveillance technology may be present in the form of tangible as well as intangible goods.*

## Amendment 16

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 21 – point a

##### *Text proposed by the Commission*

(a) ***mobile*** telecommunication interception equipment;

##### *Amendment*

(a) telecommunication interception equipment;

Or. en

##### *Justification*

*This category should include all forms of telecommunication interception equipment for reasons of coherency and effectiveness.*



## Amendment 17

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 21 – point b

*Text proposed by the Commission*

(b) intrusion software;

*Amendment*

(b) intrusion software ***marketed and specifically designed to be run or installed without active informed consent or authorisation of the owner or administrator and modifying or denying access to a system or extracting data without authorisation;***

Or. en

#### *Justification*

*The specification of intrusion software must take into account the specific intent given that the same software can be used for malicious as well as desirable defensive purposes. The defensive usage of intrusion software is a key element in the discovery, disclosure and ultimate remediation of vulnerabilities.*

## Amendment 18

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 21 – point d

*Text proposed by the Commission*

(d) lawful interception systems and data retention systems;

*Amendment*

(d) lawful interception systems and data retention systems ***connected with such interception systems;***

Or. en

#### *Justification*

*'Data retention systems' by itself is too broad of a category since it covers almost every database and is not restricted to data retention systems for data received from lawful interception systems.*

## Amendment 19

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 21 – point e

*Text proposed by the Commission*

*Amendment*

(e) *digital forensics;*

*deleted*

Or. en

#### *Justification*

*As long as a clear and effective distinction between an offensive and defensive usage of digital forensics is not available, this category should not be included as it may cause more harm than it would prevent.*

## Amendment 20

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 22 a (new)

*Text proposed by the Commission*

*Amendment*

*22a. 'due diligence' means the process by which businesses meet their responsibility to respect human rights, as laid out in the UN Guiding Principles on Business and Human Rights, by identifying, preventing, mitigating and accounting for human rights impacts of their operations and business relationships;*

Or. en

#### *Justification*

*The inclusion of a comprehensive definition of “due diligence” is inextricably linked to Article 4(2).*

## Amendment 21

### Proposal for a regulation

#### Article 4 – paragraph 1 – introductory part

*Text proposed by the Commission*

1. An authorisation shall be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the competent authority that the items in question are or may be intended, in their entirety or in part:

*Amendment*

1. An authorisation shall be required for the export of dual-use items not listed in Annex I if the exporter ***is aware, has grounds for suspecting or*** has been informed by the competent authority that the items in question are or may be intended, in their entirety or in part:

Or. en

*Justification*

*The proposed wording aligns with Article 4(4) of the current Dual Use Regulation with regards to ‘awareness’ and with Article 5(3) with regard to ‘suspicion’. The combination of these three levels should be seen as equally important for motivating requests for authorisations.*

**Amendment 22**

**Proposal for a regulation**

**Article 4 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons;

*Amendment*

(a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles ***or unmanned aerial vehicles*** capable of delivering such weapons;

Or. en

*Justification*

*For internal consistency the text of the Regulation should be in line with Section A of Annex I, where unmanned aerial vehicles are listed. For the purpose of its internal logic and in order for the new Regulation to be future proof, it should at the least address the latest technological realities.*

## Amendment 23

### Proposal for a regulation

#### Article 4 – paragraph 1 – point c

*Text proposed by the Commission*

(c) for *use as parts or components of military items listed in the national military list that have been exported from the territory of a Member State without authorisation or in violation of an authorisation prescribed by national legislation of that Member State;*

*Amendment*

(c) for *a use which, either in the exporting country or in the country of destination, is illegal or where the country of destination has no legal framework which is compliant with international human rights law;*

Or. en

#### *Justification*

*It is clear that items which are illegal in the country of destination need authorisation. Also, items deemed illegal in the EU, at the least, must be granted a prior authorisation. In addition, given the insufficiency of legal frameworks in certain destination countries, reference must be made to international human rights law.*

## Amendment 24

### Proposal for a regulation

#### Article 4 – paragraph 1 – point c a (new)

*Text proposed by the Commission*

*Amendment*

(ca) *for the benefit of an illegal occupation or annexation under international law;*

Or. en

#### *Justification*

*This amendment is inextricably linked to the extension of the scope of the EU export control regime to include serious human rights violations. Furthermore, the Regulation should align with recent judgements of the European Court of Justice with regards to European trade relations with occupying countries.*

## Amendment 25

### 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) for ***uses which cause or facilitate*** serious violations of human rights or international humanitarian law as identified by relevant public international institutions, or European or national competent authorities, and ***or*** where there is evidence of the use of this or similar items for directing, ***facilitating*** or implementing such serious violations by the proposed end-user;

Or. en

#### *Justification*

*Serious violations of human rights are committed outside of armed conflict or internal repression as well. The protection from these violations should not be limited to only these cases in the framework of export controls.*

## Amendment 26

### 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 under his obligation to exercise due diligence, is aware, ***has grounds for suspecting or has been informed*** 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.

*Justification*

*The proposed wording aligns with Article 4(4) of the current Dual Use Regulation with regards to ‘awareness’ and with Article 5(3) with regard to ‘suspicion’. The combination of these three levels should be seen as equally important for motivating requests for authorisations.*

**Amendment 27****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 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.

*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 **two years**, and may be renewed by the competent authority.

Or. en

*Justification*

*To limit the bureaucratic burden on European businesses one should align with the median validity period in the European Union which is currently around two years.*

**Amendment 28****Proposal for a regulation  
Article 4 – paragraph 4 – subparagraph 1***Text proposed by the Commission*

A Member State which imposes an

*Amendment*

A Member State which imposes an

authorisation requirement, in application of paragraphs 1, 2 and 3 on the export of a dual-use item not listed in Annex I, shall immediately inform the other Member States and the Commission and provide them with the relevant information, in particular concerning the items and end-users concerned. The other Member States shall give all due consideration to this information and shall make known within 10 working days any objections they may have to the imposition of such an authorisation requirement. In exceptional cases, any Member State consulted may request an extension of the 10-day period. However, the extension may not exceed **30** working days.

authorisation requirement, in application of paragraphs 1, 2 and 3 on the export of a dual-use item not listed in Annex I, shall immediately inform the other Member States and the Commission and provide them with the relevant information, in particular concerning the items and end-users concerned. The other Member States shall give all due consideration to this information and shall make known within 10 working days any objections they may have to the imposition of such an authorisation requirement. In exceptional cases, any Member State consulted may request an extension of the 10-day period. However, the extension may not exceed **20** working days.

Or. en

#### *Justification*

*The extension of national authorisation requirements to other Member States should become a key component of treatment of dual use items not listed in Annex I therefore the objection period should be shortened.*

#### **Amendment 29**

##### **Proposal for a regulation**

##### **Article 4 – paragraph 4 – subparagraph 3**

###### *Text proposed by the Commission*

If objections are received from **any 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.

###### *Amendment*

If objections are received from **at least half of the** Member **States**, 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.

Or. en

### *Justification*

*The extension of national authorisation requirements to other Member States should become a key component of treatment of dual use items not listed in Annex I and therefore the threshold for objection should be increased. The Commission Proposal gives Veto powers to a single Members State. This would hinder the purpose of this article to increase harmonisation in the European Union.*

### **Amendment 30**

#### **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 will maintain an updated register of authorisation requirements in place ***which shall be accessible to the public.***

Or. en

### *Justification*

*All stakeholders must be informed about the implementation of this Regulation.*

### **Amendment 31**

#### **Proposal for a regulation**

#### **Article 5 – paragraph 1**

##### *Text proposed by the Commission*

1. An authorisation shall be required for brokering services of dual-use items if the broker 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(1).

##### *Amendment*

1. An authorisation shall be required for brokering services of dual-use items if the broker ***is aware, has grounds for suspecting or*** 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(1).

Or. en



### *Justification*

*The proposed wording aligns with Article 4(4) of the current Dual Use Regulation with regards to ‘awareness’ and with Article 5(3) with regard to ‘suspicion’. The combination of these three levels should be seen as equally important for motivating requests for authorisations.*

## **Amendment 32**

### **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, ***has grounds for suspecting or has been informed*** 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.

Or. en

### *Justification*

*The proposed wording aligns with Article 4(4) of the current Dual Use Regulation with regards to ‘awareness’ and with Article 5(3) with regard to ‘suspicion’. The combination of these three levels should be seen as equally important for motivating requests for authorisations.*

## **Amendment 33**

### **Proposal for a regulation Article 7 – paragraph 2**

#### *Text proposed by the Commission*

2. 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

#### *Amendment*

2. If a supplier of technical assistance is aware, ***has grounds for suspecting or has been informed*** 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

make such technical assistance subject to authorisation.

authority which will decide whether or not it is expedient to make such technical assistance subject to authorisation.

Or. en

#### *Justification*

*The proposed wording aligns with article 4(4) of the current Dual Use Regulation with regards to ‘awareness’ and with article 5(3) with regard to ‘suspicion’. The combination of these three levels should be seen as equally important for motivating requests for authorisations.*

### **Amendment 34**

#### **Proposal for a regulation**

#### **Article 10 – paragraph 1 – subparagraph 1 – point b**

##### *Text proposed by the Commission*

(b) global export authorisation, ***including global export authorisation for large projects;***

##### *Amendment*

(b) global export authorisation

Or. en

#### *Justification*

*The category of “large projects” is first and foremost a tool to facilitate the export of nuclear power plants. Nuclear energy is by definition a dual use technology with considerable proliferation and security risks. This Regulation should therefore not facilitate its export.*

### **Amendment 35**

#### **Proposal for a regulation**

#### **Article 10 – paragraph 1 – subparagraph 1 – point d**

##### *Text proposed by the Commission*

(d) Union General Export Authorisations for certain exports as set out in Sections A to J of Annex II .

##### *Amendment*

(d) Union General Export Authorisations for certain exports as set out in Sections A ***to F and H to J*** of Annex II.

Or. en

### *Justification*

*There is no correlation between the value of an item and its potential security risk. Therefore, it is suggested to delete the low shipment value clause in order to avoid loopholes in the Regulation.*

### **Amendment 36**

#### **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 ***shall be valid for two years*** and global export authorisations shall be valid for ***five years***, and ***both*** may be renewed by the competent authority. ***This does not prevent competent authorities from revoking individual or global export authorisations at any time.***

Or. en

### *Justification*

*To limit the bureaucratic burden on European businesses we should align with the current median validity period in the European Union which is currently around two years. The validity period for global export authorisations should equally be increased to five years. The category of “large projects” is first and foremost a tool to facilitate the export of nuclear power plants. Nuclear energy is by definition a dual use technology with considerable proliferation and security risks. This Regulation should therefore not facilitate its export.*

### **Amendment 37**

#### **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*

***Individual export*** authorisations ***shall*** be subject to an end-use statement.

Or. en

*Justification*

*In light of the European Commission's intension to shift away from individual licences to global authorisation licenses, individual licenses will become more security sensitive and should therefore have increased end-user verification requirement.*

**Amendment 38**

**Proposal for a regulation**

**Article 10 – paragraph 6 – point c**

*Text proposed by the Commission*

(c) not be used if the exporter 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 1 , or if the exporter is aware that the items are intended for the abovementioned uses.

*Amendment*

(c) not be used if the exporter ***is aware, has grounds for suspecting or*** 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 1, or if the exporter is aware that the items are intended for the abovementioned uses.

Or. en

*Justification*

*The proposed wording aligns with Article 4(4) of the current Dual Use Regulation with regards to 'awareness' and with Article 5(3) with regard to 'suspicion'. The combination of these three levels should be seen as equally important for motivating requests for authorisations.*

**Amendment 39**

**Proposal for a regulation**

**Article 11 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

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

*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 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.

established, or from where the brokering services or technical assistance will be supplied. ***This applies also to brokering services and the supply of technical assistance of subsidiaries or joint ventures established in third countries but owned or controlled by companies established on the territory of the Union.***

Or. en

#### *Justification*

*The scope of the text of the Commission is not as precise as it could be. The original text does not specify which relationships between companies established on the territory of the Union and on the territory of third countries are covered. By addition reference to subsidiaries and joint ventures coherent implementation on this Regulation could be strengthened.*

#### **Amendment 40**

##### **Proposal for a regulation**

##### **Article 14 – paragraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(da) 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;***

Or. en

#### *Justification*

*Article 14(1) currently already lists five criteria of Common Position 2008/944/CFSP. The addition of criterion 6 leads to a more comprehensive list.*

#### **Amendment 41**

##### **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 military technology or equipment with regard to the technical and economic capacity of the recipient country;***

Or. en

*Justification*

*Article 14(1) currently already lists five criteria of Common Position 2008/944/CFSP. The addition of criterion 8 leads to a more comprehensive list.*

## **Amendment 42**

### **Proposal for a regulation**

#### **Article 14 – paragraph 1 – point d c (new)**

*Text proposed by the Commission*

*Amendment*

***(dc) whether the use of the item either in the exporting country or in the country of destination is illegal or where the country of destination has no legal framework which is compliant with international human rights law;***

Or. en

*Justification*

*It is clear that items which are illegal in the country of destination need authorisation. Also, items deemed illegal in the EU, at the least, must be granted a prior authorisation. In addition, given the insufficiency of legal frameworks in certain destination countries, reference must be made to international human rights law.*

## **Amendment 43**

### **Proposal for a regulation**

#### **Article 14 – paragraph 1 – point d d (new)**

*Text proposed by the Commission*

*Amendment*

***(dd) whether the item in question is intended for benefitting of an illegal occupation or annexation under international law;***

Or. en

*Justification*

*The Regulation needs to align with recent judgements of the European Court of Justice with regards to European trade relations with occupying countries.*

#### **Amendment 44**

##### **Proposal for a regulation**

##### **Article 14 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Member States shall not grant individual or global export authorisations or authorisations for brokering services or technical assistance in respect of a dual-use item under this Regulation, and shall revoke any such authorisation already granted, where there is evidence of the use of that dual-use item, or similar technology or equipment, in serious human rights violations or serious violations of humanitarian law;***

Or. en

*Justification*

*In case of documented serious violations of human rights or international humanitarian law a denial or revocation of an export authorisation must be mandatory.*

#### **Amendment 45**

##### **Proposal for a regulation**

##### **Article 14 – paragraph 2**

*Text proposed by the Commission*

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.

*Amendment*

2. The Commission and the Council, ***in close cooperation with the EEAS, and in accordance with procedures set out in paragraph 4 of Article 21***, 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 ***by the date of entry into force of this Regulation***.

Or. en

*Justification*

*The coherent implementation of this Regulation depends on a clear text and to a large degree on the availability of comprehensive guidance for exporters. This guidance must be available at the point of the entry into force of this Regulation.*

**Amendment 46**

**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 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. ***Amendments may also concern decisions to delist products already listed.***

Or. en

*Justification*

*The development of section B in Annex I is a dynamic process which should incorporate additions as well as the possibility to delist products already listed.*



## Amendment 47

### Proposal for a regulation

#### Article 21 – paragraph 3

*Text proposed by the Commission*

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 this Regulation.

*Amendment*

3. The Dual-Use Coordination Group shall 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 consult exporters, brokers, **civil society organisations** and other relevant stakeholders concerned by this Regulation.

Or. en

*Justification*

*Given the inclusion of a strong human rights dimension it is appropriate to strengthen and explicitly mention the participation of civil society organisations, acknowledging their role of monitoring the human rights situation in third countries.*

## Amendment 48

### Proposal for a regulation

#### Article 21 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a. The Dual-Use Coordination Group shall in particular establish a technical working group on assessment criteria for point d of paragraph 4 of Article 4 and point b of paragraph 1 of Article 14 in consultation with an independent group of experts, academia and civil society organisations to provide advice;**

Or. en

### *Justification*

*This addition is inextricably linked to the proposed extension of the scope of the dual-use Regulation to include the scope of serious human rights violations. Due to the importance of clear assessment criteria for the novel parts of this Regulation a specific technical working group should be set up. Given the inclusion of a strong human rights dimension it is appropriate to strengthen and explicitly mention the participation of civil society organisations, acknowledging their role of monitoring the human rights situation in third countries.*

### **Amendment 49**

#### **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 promoting a common interval for applicable penalties for infringements of this Regulation.***

Or. en

### *Justification*

*The strife towards harmonisation between Member States should also include the convergence of applicable penalties.*

### **Amendment 50**

#### **Proposal for a regulation Article 24 – paragraph 2**

##### *Text proposed by the Commission*

2. The Commission shall submit an annual report to the European Parliament and the Council on the implementation and enforcement of controls in the Union and on the activities, examinations and consultations of the Dual-Use Coordination Group. Member States shall provide to the

##### *Amendment*

2. The Commission shall submit an annual report to the European Parliament and the Council on the implementation and enforcement of controls in the Union and on the activities, examinations and consultations of the Dual-Use Coordination Group. Member States shall provide to the

Commission all appropriate information for the preparation of the report. This annual report shall be public.

Commission all appropriate information for the preparation of the report. This annual report shall be public. ***Member States shall also disclose publicly, in a timely and easily accessible manner, information on the volume, value, nature of equipment, and destination of their trade in dual-use items, as well as information regarding approved or denied exports, in order to enable appropriate oversight by elected representatives, independent bodies and the public. Human rights risk assessments undertaken by authorities and companies regarding authorised or denied export licenses shall also be made publicly available.***

Or. en

#### *Justification*

*All stakeholders must be informed about the implementation of this Regulation. This measure would strive to harmonise the currently fragmented information disclosure practises in European Union.*

#### **Amendment 51**

##### **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 maintain regular and reciprocal exchange of information with third countries ***and relevant international organisations, such as the OECD, in particular with regard to developments falling in the scope of Section B of Annex I. The Commission shall report annually to the European Parliament on such activities.***

Or. en

*Justification*

*The creation of an EU autonomous list, embedded in Annex I B, must go hand in hand with an active approach to promote and establish this list as an international standard.*

**Amendment 52**

**Proposal for a regulation**

**Annex I – Section B – category 10 – subcategory 10A001 – point b – subpoint e a (new)**

*Text proposed by the Commission*

*Amendment*

**(ea) marketing**

Or. en

*Justification*

*The additions to Annex I B are inextricably linked to Article 2(b), the inclusion of cyber surveillance technology. To reduce unnecessary licensing applications and unnecessary bureaucratic burdens for businesses items with the ‘purpose for marketing’ should also be excluded.*

**Amendment 53**

**Proposal for a regulation**

**Annex I – Section B – category 10 – subcategory 10A001 – point b – subpoint e b (new)**

*Text proposed by the Commission*

*Amendment*

**(eb) network protection, such as  
firewalls**

Or. en

*Justification*

*The additions to Annex I B are inextricably linked to Article 2(b), the inclusion of cyber surveillance technology. Network protection measures should not fall under the scope of export control given their importance for the protection of human rights and in particular the right to privacy.*

## Amendment 54

### Proposal for a regulation

#### Annex I – Section B – category 10 – subcategory 10A001 – point b – subpoint e c (new)

*Text proposed by the Commission*

*Amendment*

*(ec) intrusion software which is:*

*(a) designed to be installed or used with explicit consent and authorisation by manufacturers, administrators, owners, or users for the purposes of asset protection, asset tracking, asset recovery, remote management, or information and communication technology security testing; or*

*(b) distributed for the purposes of helping detect or prevent its unauthorised execution, to organisers conducting or facilitating public research, education, or information and communication technology security testing, or to computer emergency response teams.*

*Information and communications technology security testing means the 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.*

Or. en

#### *Justification*

*The additions to Annex I B are inextricably linked to Article 2(b), the inclusion of cyber surveillance technology. The specification of intrusion software must take into account the specific intent, given that the same software can be used for malicious as well as desirable defensive purposes. The defensive usage of intrusion software is a key element in the discovery, disclosure and ultimate remediation of vulnerabilities.*

## Amendment 55

### Proposal for a regulation Annex II – Section G

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

Or. en

#### *Justification*

*There is no correlation between the value of an item and its potential security risk therefore, we propose to delete the entire category 'G. LOW VALUE SHIPMENTS' This amendment is inextricably linked to amendment 36.*

## Amendment 56

### Proposal for a regulation Annex II – Section H – part 3 – paragraph 1 – point 1

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

#### *Justification*

*Conditions and requirements in the European Commission proposal limit the use of the Union General Authorisation EU008 by internationally-operating companies with complex affiliation structures. The authorisation should be available for use both by the exporter and companies superordinate to the exporter, such as parent or holding company. This amendment is inextricably linked to amendment 14.*

## Amendment 57

### Proposal for a regulation Annex II – Section H – part 3 – paragraph 1 – point 2

*Text proposed by the Commission*

*Amendment*

(2) by employees of the exporter or of

(2) by employees of the exporter or of

any entity owned or controlled by the exporter in its or their own commercial product development activities and, in the case of employees, pursuant to the agreement establishing the employment relationship.

any entity owned or controlled by the exporter ***or any parent or holding companies*** in its or their own commercial product development activities and, in the case of employees, pursuant to the agreement establishing the employment relationship.

Or. en

### *Justification*

*Conditions and requirements in the European Commission proposal limit the use of the Union General Authorisation EU008 by internationally-operating companies with complex affiliation structures. The authorisation should be available for use both by the exporter and companies superordinate to the exporter, such as parent or holding company. This amendment is inextricably linked to amendment 14.*

## EXPLANATORY STATEMENT

*“Our Union is a guarantee that freedom, dignity, democracy and independence are no longer only our dreams, but our everyday reality.” Donald Tusk at 60th anniversary of the Treaty of Rome, 25th March 2017*

The European Union is not only united by our common interests through the European Single Market, but also by our common values spelled out in the Treaty of Lisbon. With an increasingly shaky international order and our common values put into question by internal and external forces, it is more than ever necessary that the EU upholds and promotes its values. In its article 3 (5), the Treaty of Lisbon has clearly spelled out the overarching objective of the EU’s external action, namely that the EU *“contributes to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including the respect for the principles of the United Nations Charter.”*

The proposed reform of the EU export control regime through a recast of the dual-use regulation presented by the European Commission is an important piece of legislation contributing to achieve these objectives: The dual-use regulation has the potential to back our foreign and security policy fostering peace and stability in the world, the proposed inclusion of the human rights dimension provides the EU with an additional tool to protect human rights globally and an effective export control mechanism is central to uphold free and fair trade.

As the most powerful trading block in the world, the EU remains an influential player with important leverage and with great responsibility in the international trading system.

Today, trade policy is in the limelight of public debate. While our economies are highly interconnected and globalisation has led to highly integrated value chains, EU citizens are asking questions about the effects of trade. EU Trade Policy should respond to these questions, in order to regain trusts in the benefits of it for our citizens. A comprehensive and value-based approach to EU Trade Policy will enhance legitimacy in EU Trade Policy-Making.

### **Reforming the EU export control regime: a tool to put values at the centre of EU Trade Policy**

The European Parliament has proven that it is possible to enact legislation with the aim of promoting value-based trade. With the adoption of the anti-torture<sup>1</sup> as well as the conflict minerals regulations, the European Parliament has shown that we do not only *want* a value-based Common Commercial Policy, but the EU co-legislators are *capable* of reaching an agreement to enact legislative instruments to promote human rights through EU Trade Policy, thereby, fostering comprehensive external action by the EU.

In this respect, the rapporteur welcomes the Commission’s proposal for reform of the dual-use regulation, which is another piece of legislation striving toward implementing the EU’s “Trade for all” strategy.

### **Adapting to new threats: Cyber-surveillance and human rights violations**

The rapporteur considers the approach to incorporate the human rights dimension into the EU export control regime by widening the scope of application of the regulation to human

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<sup>1</sup> REGULATION (EU) 2016/2134 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 November 2016 amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.



security positively. In this context, cyber surveillance technologies are a sensitive export item, which need to be controlled. In recent years, the European Parliament has called not less than fifteen times - by adopting resolutions - to put forward measures, which ban exports of surveillance technologies to authoritarian regimes and violators of human rights. Therefore, this Parliament can only welcome that the Commission responded to this call by incorporating a targeted catch-all clause in the EU export regime. The type of arms most relevant for armed conflicts have changed overtime and continue to change rapidly. History has told us that those, who do not adapt to these changes, will decline and perish in armed conflicts. The type of weapons, which are crucial for warfare in the 21st century, are changing, whereby digital weapons are clearly gaining relevance in conflicts. Cyber-technologies are used to spy on enemies and manipulate adversaries. The EU needs to react to this threat by including cyber technologies in the EU export control regime, so that this technology is not used to seriously violate human rights and, thereby, undermine security, democracy, pluralism and freedom of expression.

### **Making the system more effective: Enhancing involvement of and guidance for stakeholders**

The EU export control regime needs to be effective. In order to effectively react to new threats and challenges, the list of controlled items needs to be built up step-by-step in a coordinated and harmonised manner by EU Member States. The rapporteur strives to make this process more inclusive, involving relevant international bodies and particularly civil society, and ensure that the process reflects the need for a harmonised approach by EU Member States reflecting the Community method securing the functioning of the EU internal market.

Additionally, the rapporteur is of the opinion that further clarifications are needed to allow stakeholders - notably industry and licensing authorities - to be able to consistently implement the inclusion of the human security dimension and enlarging the scope in the reformed dual-use regulation. The rapporteur put forward a number of amendments with the aim to clarify definitions and establish guidance for the companies that will comply with this regulation. In the view of the rapporteur, the Commission should elaborate further guidance on the definition of serious human rights violations with the aim to ensure a harmonised implementation of this regulation. In this context, it is also important to clarify the responsibilities for “due diligence” for industries. The rapporteur is aware of concerns voiced by industry to be able to comply with the additional responsibilities without undermining the competitiveness of EU companies or leading to overstretching of the capacity to thoroughly handle licensing requests. Therefore, he urges for further, timely guidance together with all relevant stakeholders in this area. In fact, the rapporteur requests in his amendments that comprehensive guidance should be ready and available no later than at the implementation date of this regulation.

Making the EU export control regime more effective also means closing remaining loopholes. Having this objective in mind the rapporteur suggests a number of modifications to the proposed regulation. In this context, the validity for granting licenses should be prolonged to ease the administrative burden, but powers of licensing authorities to revoke license, in order to react rapidly to developments need to be maintained.

### **Ensuring a functioning internal market: Enhancing harmonisation in the implementation of the EU export control regime:**

First of all, the rapporteur welcomes the objective of the European Commission to minimise the administrative burden of intra-EU transfers. The proposed EU regulation should facilitate the functioning of the internal market. The rapporteur is supportive of the proposal for optimisation of the EU licensing architecture.

However, the EU export control regime is only as effective as the weakest link in its control regime. Therefore, the rapporteur believes that the dual-use regulation needs to be applied more uniformly throughout the EU. He would like to see the mandatory consultation procedure between competent authorities of Member States further strengthened and avoid any veto powers for controlling sensitive items. In this context, the rapporteur believes that the issue of harmonising sanctions in case of violations of the EU export control regime must also need be discussed in the context of the reform. Knowing that this relates to criminal law falling within the competences of the Member States, the rapporteur considers that increased harmonisation of sanctions are part and parcel to strengthen the regime.

**Global leadership: Leading for the creation of a global level-playing field**

The EU export control regime is embedded in international bodies. The EU is a strong believer in multi-lateralism and the rapporteur strongly supports a close linkage between international regimes and the EU export control mechanism. However, the EU is the major trading block in the world and a powerful promoter of human rights globally. Therefore, we must show leadership and should not refrain from taking a step ahead of our partners, when needed. The EU should more pro-actively strive towards enhanced regulatory convergence at global level. The rapporteur welcomes the basis for the development of regular dialogues between the EU and key trade partners and believes that this dialogue needs to be further streamlined into the EU's Trade Policy.

**Time to act: Make the EU export control regime 'future-proof'**

The last years have taught us that the international order has become more fragile. The values, which bind the EU together - democracy, freedom and the rule of law - are threatened in many countries, with which we are economically and politically interconnected. Technological changes are accelerating and impacting not only on how our societies live, but also on how our free and open societies are threatened. Expectations by our citizens vis-a-vis the effectiveness of our external policies in general, and EU Trade Policy in particular are increasing. The single internal market is an important asset of the EU to be promoted for the well-being of our citizens and the competitiveness of our industries. In times of increasing uncertainties, the EU should not shy away from leading globally in defence of our values. In this geopolitical context, it is time to act by building on the existing tools to better protect and promote our values and interests globally. The reform of the dual-use regulation is a much awaited and welcome opportunity to make the EU export control regime 'future-proof' and thereby contributing to achieve the EU's objectives as spelled out in the Treaty of Lisbon. The rapporteur is committed to work constructively to forge an EP position to achieve this and to ultimately work towards enacting a 'future-proof', reformed dual-use regulation.

## ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

D(2017)13264

Bernd Lange  
Chair, Committee on International Trade  
ASP 12G205  
Brussels

**Subject: Proposal for a regulation of the European Parliament and of the Council setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast) (COM(2016)0616 – C8-0393/2016 – 2016/0295(COD))**

Dear Chair,

The Committee on Legal Affairs has examined the proposal referred to above, pursuant to Rule 104 on Recasting, as introduced into the Parliament's Rules of Procedure.

Paragraph 3 of that Rule reads as follows:

*“If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible.*

*In such a case, over and above the conditions laid down in Rules 169 and 170, amendments shall be admissible within the committee responsible for the subject-matter only if they concern those parts of the proposal which contain changes.*

*However, amendments to parts of the proposal which remain unchanged may, by way of exception and on a case-by-case basis, be accepted by the Chair of the committee responsible for the subject matter if he or she considers that this is necessary for pressing reasons relating to the internal logic of the text or because the amendments are inextricably linked to other admissible amendments. Such reasons must be stated in a written justification to the amendments.”*

Following the opinion of the Consultative Working Party of the legal services of the Parliament, the Council and the Commission, which has examined the recast proposal, and in keeping with the recommendations of the rapporteur, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such in the proposal and by the Consultative Working Party and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in their substance.

In conclusion, at its meeting of 23 March 2017, the Committee on Legal Affairs, by 21 votes in favour, 0 votes against and 0 abstentions<sup>1</sup>, recommends that the Committee on International Trade, as the committee responsible, can proceed to examine the above proposal in accordance with Rule 104.

Yours sincerely,

Pavel Svoboda

*Encl.: Report signed by the President of the Consultative Working Party.*

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<sup>1</sup> The following Members were present: Isabella Adinolfi, Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Daniel Buda, Jean-Marie Cavada, Kostas Chrysogonos, Eugen Freund, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sajjad Karim, Sylvia-Yvonne Kaufmann, António Marinho e Pinto, Jiří Maštálka, Angelika Niebler, Maria Noichl, Emil Radev, Julia Reda, Virginie Rozière, Pavel Svoboda, Rainer Wieland, Tadeusz Zwiefka

ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION



CONSULTATIVE WORKING PARTY  
OF THE LEGAL SERVICES

Brussels, 26 January 2017

**OPINION**

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT  
THE COUNCIL  
THE COMMISSION**

**Proposal for a Regulation of the European Parliament and of the Council setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast)**

**COM(2016) 616 final of 28.9.2016 - 2016/0295 (COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 20 October and 1 and 7 December 2016 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At those meetings<sup>1</sup>, an examination of the proposal for a Regulation of the European Parliament and of the Council recasting Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items resulted in the Consultative Working Party's establishing, by common accord, that the following should have been marked with the grey-shaded type generally used for identifying substantive changes:

- in Article 6(1), the proposed deletion of the words '*the transit occurs*';
- in Article 20(1), second subparagraph, the proposed replacement of the words '*list of those authorities*' with the word '*information*';
- the proposed deletion of the entries relating to Croatia and Iceland in the lists of countries contained in points C, D, E and F of Annex II.

In consequence, examination of the proposal has enabled the Consultative Working Party to

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<sup>1</sup> The Consultative Working Party worked on the basis of the English language version of the proposal, being the master-copy language version of the text under discussion.

conclude, without dissent, that at the date on which the proposal was submitted by the Commission to the European Parliament and to the Council it did not comprise any substantive amendments other than those identified as such. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that at that date the proposal contained a straightforward codification of the existing legal text, without any change in its substance.

However, the Consultative Working Party also acknowledged that on 15 November 2016 a new act amending the act being recast was published in the Official Journal, *i.e.* Commission Delegated Regulation (EU) 2016/1969 of 12 September 2016 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. Regulation (EU) 2016/1969 entered into force on 16 November 2016. Its Article 1 introduced new annexes which replaced the texts previously contained in Annex I, Annexes IIa to IIg and Annex IV. That latest amendment should also be taken into account in the context of the legislative procedure carried out with regard to recast proposal COM(2016) 616 final.

F. DREXLER  
Jurisconsult

H. LEGAL  
Jurisconsult

L. ROMERO REQUENA  
Director General