
SUMMARY. The Dual-Use Working Party discussed "new rules for export control of cyber-surveillance items in the EU" in light of a report by the Institute for Information Law (IViR) of the University of Amsterdam, was updated on the Commission's technical work to support the implementation of the new Export Control Regulation, as well as on plans for changes to national legislation as required under the new Regulation. The DUWP reviewed the outcome of the Trade & Tech Council (TTC) meeting of 29 September 2021 and advanced preparations for a Stakeholders Outreach Event to be held on 27 October 2021. The DUWP also discussed inputs from Member States (MS) for the preparation of a Work Plan for the TTC Export Control Working Group. The DUWP exchanged views on digital surveillance in light of reports concerning the use of the Pegasus spyware, as well as on controls of exports to Eritrea and Ethiopia, and to Afghanistan and Pakistan. The DUWP took note of developments in multilateral export control regimes as well as ongoing engagement with partners, in particular in view of an Export Control Dialogue with the Western Balkans to be held on 26 October 2021. The DUWP was updated on the adoption of the Commission delegated Regulation updating the EU Control List and invited to consider initiating an early non-objection procedure to ensure its entry into force before the end of the year. The Commission was represented by DG TRADE and TAXUD.

1. Adoption of the agenda

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2. Update of Control List - Commission Delegated Act (SC, MI)

COM reported on the adoption on 20 October 2021 of the Commission delegated Regulation updating the EU Control List and informed on plans for publication. In order to ensure that the Regulation comes into force still this year, COM suggested that the Council confirms its "non-objection" earlier than the normal deadline of 2 months. The Council's Legal Service confirmed the possibility for the Council to

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agree to the early entry into force of the delegated regulation through a note to COREPER. While MS where generally supportive of this course of action, SE demanded corrections to the Swedish version before agreeing to an early non-objection procedure. PRES asked COM to proceed with the necessary corrections, and to inform on the European Parliament's position on this issue.

3. Regulation (EU) 2021/821 of the EP and the Council setting up a Union Regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast) implementation – part I (SC, CF)

a. The new rules for export control of cyber-surveillance items in the EU – presentation by IViR, NL, followed by Q & A

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from the Institute for Information Law (IViR) of the University of Amsterdam presented a report (WK12017/2021), prepared at the request of the Ministry of Foreign Affairs of the Netherlands, on the new provisions of Regulation (EU) No 2021/821 for controls on exports of cyber-surveillance items. took the view that the guidance developed in the context of the Common Position on arms export controls could generally also apply in relation to human rights infringements associated with cyber-surveillance exports. Regarding the definition of cyber-surveillance items, recommended that the definition should be interpreted in light of the case law of the European Court of Justice and the European Court of Human rights on surveillance. further suggested to consider interpretations of the various elements of the definition - e.g. "covert", "surveillance", "monitoring, extracting and analysing data", "from Information and Communication systems", and "specially designed" - in light of the relevant case law e.g. with reference to the nature of the data being processed. observed that some listed technologies, such as intrusion software, may not fall under the definition, there are certain non-listed technologies such as a facial or emotion recognition technologies that could fall under the definition.

b. The progress of the technical work

i. Information by the COM

COM reported on the advancement of technical work implementing Regulation (EU) 2021/821, pointing in particular to ongoing work in the STEG on due diligence guidelines and the identification of cyber-surveillance items, the setting-up and first meeting of the Emerging Technology Expert Group (ETEG), preparations for the establishment of a technical expert group dealing with
transparency and data exchange, and of the Enforcement Coordination Mechanism, as well as plans for the development of a capacity-building programme. COM also referred to ongoing consultations regarding future actions concerning controls on dual-use research and controls on semiconductors. COM referred to ongoing engagement with Partners, incl. US (Trade and Technology Council), Japan, the Western Balkans and Norway - to promote the "global convergence of controls" as mandated under Regulation (EU) 2021/821.

c. Exchange of MS information on national legislation changes and first information /outreach to stakeholders

PRES invited delegations to exchange information of changes to national legislations under the new Regulation (EU) No 2021/821.

COM invited MS to contribute to a comprehensive overview of outreach actions and of national changes to national legislations.

4. HRUS - Trade and Technology Council - Export Control Working Group
(SC, DF)

a. update on the recent developments TTC and next steps

i. Information by the COM / exchange of views and endorsement of the outreach event on 27th October

COM reported on the outcome of the Pittsburgh meeting of the Trade and Technology Council and stressed that the Joint Statement reflects EU offensive and defensive interests e.g. as it addresses security risks associated with civil-military fusion policies, emerging and cyber-surveillance technologies, while emphasising the need for cooperative plurilateral control approaches.

The DUWP advanced preparations for the Stakeholders Outreach Event. BE, DE, IE and NL expressed readiness to contribute to the event as speakers and agreed to jointly prepare the EU intervention on "challenges", in consultation with other MS and COM. Regarding the elements for intervention, FI suggested to mention enforcement, multilateralism as well as specific technologies. DE suggested
focusing on cyber-surveillance technologies in light of the provisions of the new Regulation, while NL pointed to semi-conductors as a relevant topic.

The DUWP took note of MS inputs (DE, SE, FI) to the preparation of the Work Plan, and invited other MS to contribute as well.

5. **Current developments in other policy areas with relevance for dual-use export controls**

   a. **Recent developments in related policy areas**

      i. Digital surveillance - *Pegasus* - information by the COM and exchange of views

      COM referred to reports by research organisations (e.g. the "Forbidden stories - The Pegasus Project: global democracy under cyberattack") and newspapers (Le Monde, Guardian etc) and to calls from Members of the European Parliament to take action and enforce controls.

      ii. Demarche by the US concerning controls of exports military and dual-use items to Eritrea and Ethiopia

      COM presented an analysis of relevant licensing and denials data, noting that human rights considerations are relevant to these destinations.

      iii. Afghanistan and Pakistan - information by the COM and exchange of views

      The DUWP discussed developments in Afghanistan in light of a COM analysis of relevant licensing and denials data.
iv. National risk assessment of proliferation financing – UK publication

PRES and BE pointed to a UK report regarding proliferation financing and export control (WK/2021/12650).

6. Multilateral export control regimes

a. NSG

PL informed on the calendar of upcoming meeting of the NSG. COM informed that assessments of technical proposals, as prepared by the Joint Research Centre (JRC) are available on DUeS.

b. MTCR

AT, as former Chair of the MTCR, reported that various MTCR members - incl. the US - could not participate in the Sotchi Plenary meeting. AT concluded that Switzerland will take over the Chairmanship and that the next MTCR Plenary will take place in Montreux in Oct. 2022.

c. AG /CWC (incl. revision of Toxic Chemicals note)

COM announced that a note on toxic chemicals would be circulated for discussion at the next DUWP meeting.

d. WA

HU reported on the recent discussions of the General Working Group of the Wassenaar Arrangement (WA) mid-October, and noted that no progress was made on applications for membership. HU added that the Plenary will be held on 30 Nov. to 2 Dec. 2021, and will be accompanied by celebrations for the 30th anniversary of the WA.

7. Third country cooperation
- Information by the Commission and discussion with MS

i. Western Balkans dialogue on 26th of October

PRES and COM reported on the final preparations for the EU-Western Balkans dialogue to be held on 26 October 2021. COM also informed that an assessment of relevant denials & licensing data is available on DUeS.

ii. JP

COM drew attention to Japan's "economic security policy", incl. plans for an Economic Security Act to be presented to early 2022, which has direct relevance to export controls and emerging technologies.

iii. US

The DUWP discussed options for an Export Control Dialogue to be held, possibly on 9 Dec. 2021. PRES invited delegations to provide inputs to the agenda by 12 November 2021.

8. AOB

The next DUWP meeting will be held virtually on 24 November 2021.