

Brussels, 22 November 2021  
(OR. en)

13346/21

LIMITE

COMER 107  
CFSP/PESC 1112  
CONOP 76  
ECO 125  
UD 280  
ATO 83  
COARM 234

## OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
Subject:	Outcome of proceedings of the Working Party on Dual Use Goods of 25 October 2021

### 1. 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:

#### a) *The new rules for export control of cyber-surveillance items in the EU*

DUWP received a presentation by *Ot van Daalen*, a representative from Institute for Information Law (IViR) University of Amsterdam on a research paper that focuses on the new rules for export control of cyber-surveillance items in the EU. The paper tries to reply following questions: which kind of items fall within the scope of the term “cyber-surveillance items” under the Recast of the Dual-Use Regulation, and which criteria can be used to determine whether these items are or may be intended, in their entirety or in part, for use in connection with internal repression and/or the commission of serious violations of international human rights and international humanitarian law? The research paper also compares the old and new framework of controls for cyber surveillance items, and gives concrete recommendations to the implementers.

Following the briefing, Member States appreciated comprehensive and timely report on which they would base their national practices in implementing provisions related to exports of cyber surveillance items. Delegations invited to present and discuss the paper also in Surveillance technology expert group (STEG) which is currently preparing guidelines for exporters. Some Member States drew attention to many legal aspects related to controls of cyber surveillance items in different jurisdictions, that should be taken into account.

***b) Update on the Delegated act***

The Commission briefly informed DUWP about the 2020-2021 update of Annex I to Dual-Use Regulation. A Delegated Act was adopted on 20 October and sent to the Council and the European Parliament. A consultation procedure was launched, and the Council and the EP have 2 months to express their opinion about the Delegated Act. The Group was informed about the modalities of an early 'non-objection' to this act, in order to accelerate the entry into force. Swedish delegation drew attention to errors in Swedish version of the text.

***c) The progress of the technical work - Information by the COM***

The Commission informed the DUWP about the progress in setting up technical working groups in charge of some implementation aspects of the Dual Use Regulation. Surveillance technology experts group (STEG) has been established in June and has been very active. Several meetings have taken place and work on guidelines for exporters is well advanced. STEG is also working on identifying concrete non-listed cyber surveillance items subject to future controls. Concerning Emerging technologies working group (ETEG): progress has been made to finalise Terms of Reference, the group met for its first meeting on 21 October. Work of this group is still in its initial stage. Transparency expert group (TEG) will present draft Terms of Reference soon, preparatory work is ongoing and outcome will be reported to Dual Use Coordination group. Draft Terms of Reference for Enforcement coordination mechanism were presented to DUCG and the mechanism should meet for the first time by the end of this year or early next year. Concerning the capacity building, COM reported that JRC is coordinating possible integration of capacity building exercises into existing training programmes. In addition, COM strongly invited all the Member States to consult and apply recently published guidelines on Dual use research and do the outreach to partners of third countries in this respect. An info note on DU research guidelines has been also issued to the DUCG.

***d) Exchange of MS information on national legislation changes and outreach to stakeholders***

Member States exchanged views on national legislation changes put in place in view of implementing the Dual use regulation. Most of the Member States reported they were still in the process to adapt national legislation and many of them would need national Parliaments approval of a new legislation. Those Member States, where changes in government or Parliament were expected, would need more time to put new provisions in place. Most MS that intervened mentioned that outreach events were organised with stakeholders, triggering a lot of interest from exporters, mainly on new export controls authorisations EUGEA 007 and 008. The Commission found the conducted outreach events encouraging and invited the MS to compile all the actions in order to get an overview and present it at Export controls forum in December.

## **2. US - EU Trade and Technology Council**

### ***a) Information by the COM / exchange of views and endorsement of the outreach event on 27<sup>th</sup> October / ECWG work plan - exchange of views***

COM recalled the positive outcome of the EU-US TTC meeting in Pittsburgh on 29 September 2021 and the Joint Statement that identified ten areas of work and priorities, including on export controls. COM also thanked all MS for their engagement and full commitment to the process by not only paving the ground for a successful meeting, but also by working to improve the overall transatlantic trade relations. COM highlighted that the work of Export controls group was one of the most advanced one within the TTC framework, despite the short timeframe given for consultations and preparations prior Pittsburgh meeting, and provided good basis for further work. It was also recalled that an informal meeting was convened on 13 October by the Commission, in consultation with the Chair of the DUWP, to inform members of the DUWP on the outcome of the 1<sup>st</sup> TTC meeting and discuss plans for the follow-up in the area of export controls.

COM invited Member States to put forward their ideas. Written inputs by MS would be circulated by the Presidency through Delegates Portal. In addition, COM indicated that US is preparing to share a draft Work Plan in the course of November 2021.

DUWP discussed also preparations for EU-US outreach event on 27 October (in hybrid format). Stakeholders Outreach event will provide an opportunity for experts from industry, academia and civil society to review and discuss, with representatives of EU and US authorities, principles and areas for export control cooperation identified in the Pittsburgh Statement.

DUWP endorsed draft agenda of the event, taking into account US proposals. Germany, Ireland and the Netherlands will provide presentations on implementation of some provisions of Dual use regulation, controls on cyber surveillance items, and will focus also on semiconductors shortage issue. Belgium will be the EU moderator during the open discussion.

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

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

The Presidency drew MS attention to Pegasus affair. It recalled that an investigation published by 17 media organisations, led by a Paris-based non-profit journalism group, said the spyware had been used in attempted and successful hacks of smartphones belonging to journalists, government officials and human rights activists. COM said that debate is ongoing on this matter in different fora and invited Member States to discuss the issue and reflect on elements for a possible EU position on this subject. One possibility could be to impose stronger controls on exports of technologies that could be used for spying. In their comments, delegations mainly emphasised that Pegasus affair concerns imports from a third country, not exports that are regulated by Dual Use Regulation.

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

The Presidency recalled recent demarche by the US calling for suspension of exports of military and dual-use items to Eritrea and Ethiopia in view of ongoing military conflict in that area and invited Member States to share their views on the matter. A similar discussion had already taken place in COARM group where MS demonstrated convergence in their approaches by strictly applying EU Common Position. COM gave a short presentation on recent denials to Ethiopia and Eritrea. Most of the reasons for denials are human rights considerations and risks of diversion.

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

DUWP exchanged views on exports of dual use items to Afghanistan and Pakistan. COM shortly outlined statistics on denials. In recent years, there has been an increase of denials to Pakistan, with main reasons risk of diversion and links to WMD programs. Most of the Member States reported that they had almost no exports to these countries or that they have very restrictive rules in place coupled with strong assessment criteria.

COM will share information on denials in DuES and invited the Group to revert to the discussion at later stage, in order to aim for a common approach regarding both export destinations.

## ***iv. National risk assessment of proliferation financing – UK publication***

As a follow up to the discussion started under Portuguese Presidency, DUWP was informed by Belgium of a publication by UK on National risk assessment of proliferation financing. In their comments Member States said that exchange of experience with other countries would be useful in this respect, also in relation to transfers of technology.

# **4. Multilateral export control regimes**

## ***a. Nuclear Suppliers Group***

Poland, NSG Chair for the 2021-2022 period, shortly outlined next meetings of Consultative Group and LEEM. Technical experts group is soon to be met and NSG Chair will provide more information on outreach activities. COM informed that update on proposals submitted to the NSG was available on DUeS, any comments should be addressed to the COM.

## ***b. MTCR***

Austria, former Chair of the MTCR plenary, shortly outlined the latest developments in MTCR. Under AT Presidency there was no plenary meeting, only virtual meetings and outreach activities conducted to Mexico. This year the Plenary took place in Sochi in physical format (4-8 October), however, many States Parties were not present, due to pandemic. Several proposals were discussed in the area of development of missiles, including hypersonic missiles. No progress was reported on membership issue, some of the EU Member States still not being admitted as members of the MTCR. Next MTCR Presidency is Switzerland.

*c. Australia Group /Chemical Weapons Convention (incl. revision of Toxic Chemicals note)*

COM reported that internal discussions were held between COM and group of MS experts involved in toxic chemicals note revision. A revised note will be sent to the Presidency for distribution to Member states. The discussion on the topic will be held at next DUWP with a view of the endorsement of the revised note.

*d. Wassenaar Arrangement*

Hungary, in its capacity as the current Plenary chair of WA, shortly informed the group that GWG was held in Vienna from 19-21 October. This was the first GWG meeting since October 2019, that was postponed due to the COVID-19 pandemic. No progress on membership applications was achieved. Plenary will take place from 30 November to 2 December 2021 in Vienna. It will be also the occasion to mark the 25th anniversary of the WA.

**5. Third country cooperation**

*a) Western Balkans dialogue on export controls (26<sup>th</sup> of October)*

DUWP took note that EU-Western Balkan dialogue on export controls will be held on 26 October in a hybrid format. The draft agenda was circulated to all Member States and covers many topics. Germany, Romania and Belgium will give presentations on concrete examples of the implementation of Dual Use Regulation and on outreach to Academia.

*b) Japan*

COM reported on Japan's new economic security strategy that will focus on two pillars of strategic autonomy and indispensability. The economic security agenda will also encompass protecting sensitive communication technologies, thus through export controls. COM invited Member States to share any information in this respect.

*c) US*

COM invited to reflect on upcoming EU-US export control dialogue, to be held in December. All MS that took floor supported the continuation of the dialogue, emphasising need to dissociate political discussions within EU-US TTC from technical discussions within already established export control dialogue with US.

**6. AOB**

No items were discussed.