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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
Subject:	Outcome of proceedings of the Working Party on Dual Use Goods of 13 July 2022

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1. Priorities of the Czech Presidency

Czech Presidency outlined its priorities for the upcoming semester. The aim of the Presidency is to continue the work undertaken in trio programme and strive to find common solutions to the challenges that the EU as a whole or individual Member States will face. In the context of the current geopolitical situation, especially in connection with the conflict in Ukraine, the Presidency will also strive to strengthen EU security in fight against all forms of terrorism and radicalism or extremism. In this respect, effective implementation of Regulation 2021/821 will bring important contribution. Furthermore, the Presidency will continue to support new initiatives with EU partner countries. Expected outputs in the second half of the year related to the implementation of Regulation 2021/821: finalizing work on due diligence guidelines for exporters of cybersurveillance items, development of dedicated IT tools, and development of guidelines on transparency. Due attention will continue to be paid to issues of concern, such as controls of intangible transfers, emerging technologies, controls of cybersurveillance technologies, enforcement through Enforcement coordination mechanism.

As regular items on DUWP agenda would remain further implementation of Dual Use Regulation, including regular updates; stock taking of developments in multilateral export control regimes; trend analysis of dual use denials. DUWP meetings are planned on regular basis, once per month, with a December meeting back-to-back with Annual Export control Forum. If need be, virtual meetings for technical consultations will be organized by the Presidency.

2. Regulation (EU) 2021/821 on dual-use items (Recast) - implementation:

a) Progress of the work in technical expert groups

DUWP took note of progress in technical expert groups, set up under DU Regulation.

Enforcement Coordination mechanism:

The second meeting of ECM took place on 12 July. COM assessed that it was a fruitful exchange of views with broad participation from MS (capital-based group with national competent authorities for licensing and/or enforcement participating). ECM acknowledged that its work converges with the work ongoing in DUWP and is complementary to it.

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Next ECM meeting is scheduled for 21 September.

Surveillance technology expert group (STEG): had its meeting on 12 July. One of STEG tasks is to serve as a forum for information exchange on surveillance technologies between MS experts. The second activity: identification of specific cyber surveillance technologies. Concerning the latter, STEG should be in position to conclude assessment of certain cybersurveillance technologies, based on proposals tabled in by one Member State. DUWP will be informed about the outcome and will be invited to consider next steps. On due diligence guidelines for exporters work has progressed well, however, discussions are still ongoing on compliance actions for companies. More profound discussions are needed on definition of cybersurveillance items, notably concerning the scope. Next STEG meeting is scheduled for 22 September.

Emerging technology expert group (ETEG) met on 12 July. COM reported that the group is still exploring how it could bring substantial contribution at EU level and in the context of multilateral export control regimes. Discussions are advancing on series of non-papers, identifying specific technologies. Another focus will be on risk assessment for emerging technologies, with a view of having first reflection on a common EU framework for risk assessment. This could constitute a valid deliverable for the upcoming EU-US TTC ECWG meeting. Next ETEG meeting will take place towards the end of September.

Technical group on transparency and data collection: four meetings have taken place until now. At the latest meeting, experts discussed comments and exchanged views on revised proposal by COM to draft methodology on collection of data for annual reporting. Compromise seems to be within a reach, however some open issues remain: such as, reporting on cybersurveillance related items. MS comments on revised methodology are expected before end of July. Methodology should be adopted before the end of year 2022, and public consultation will be held final approval by DUCG and DUWP. Next meeting of TEG is envisaged on 8 September.

Capacity building expert group met on 15 June. Two questionnaires have been distributed to licencing and customs authorities that would permit data gathering on actual needs in terms of capacity building.

In the ensuing discussion, Member States welcomed the progress made by technical groups and fully acknowledged usefulness of having regular updates by COM. However, they recalled importance of timely preparation of meetings and clear planning with timelines for meetings, distributed in advance.

COM agreed with necessity of timely preparation of technical meetings and agreed to circulate documents as soon as possible, well in advance of meetings. COM confirmed that all the relevant documents related to the work of these groups can be found in DUeS. COM also recalled that technical groups are intended for expert level discussions, and all their actions, when concluded, should be validated by DUCG and/or DUWP at a political level.

b) Update to Annex I of the Regulation EU 2021/821

COM informed the group that updates to Annex I are ongoing according the timeline. A special session will be organised on 14 July at DUCG, in presence of the representatives from the EP and the Council. BAFA experts will deliver a presentation on key updates to the control lists. COM has started internal consultations. Delegated act will be translated in August, while the adoption is planned for early October.

3. Implementation of Russia/Belorussia sanctions

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4. US - EU Trade and Technology Council

a) Progress of work at technical level

COM gave a short presentation on progress of technical work on trade facilitation / re-export and risk assessment on emerging technologies – two work streams identified in TTC ECWG in June for closer cooperation. It was agreed by ECWG to continue discussion at technical level in preparation of next ECWG meeting, possibly in September or October. EU-US TTC Ministerial level meeting is currently planned in November, where Export control group representatives will take stock of advancement of work and possibly present deliverables on these two topics. Discussions on risk assessment for emerging technologies, based on proposals by NL will take place in ETEG. Work on trade facilitation and re-export, based on proposal from Spain, will take place in informal technical expert group which will convene on 26 July, with the aim to prepare EU proposals for further discussion with US experts and then in the EU-US TTC.

Furthermore, COM drew attention to the non-paper by US on enforcement cooperation. EU should respond to it before September. MS were invited to react on all points proposed by US by the end of August, comments would be compiled and discussed in ECM and DUWP.

b) Organisation of a stakeholder event (19 July)

COM informed about the upcoming EU-US TTC ECWG stakeholders event that will take place on 19 July, as a virtual online event. Invitation and registration links have been circulated and all the information is available on Futurium platform. The 2nd Joint EU-U.S. Stakeholders Outreach event will showcase the progress achieved in TTC WG7 Export Control since October 2021 (date of previous stakeholder meeting). WG7's area of focus has been impacted by events in Ukraine and Russia's unprovoked invasion of that country. This has been reflected in new initiatives on export restrictions, which were picked up in detail at the last meeting of working group in June. This event will also allow to collect stakeholders' feedback and ideas for future initiatives. It will provide an opportunity to industry, academia and civil society to discuss with representatives of EU and U.S. authorities priorities for export control cooperation identified in the Pittsburgh Statement and further defined in Paris-Saclay meeting.

5. Multilateral export control regimes

a) Australia Group

Australia Group Plenary took place in Paris from 4-8 July and was chaired by Australia. COM gave its assessment of the meeting that was held in overall positive and constructive spirit (contrary to NSG). LEOM meeting presented interesting cases on enforcement issues. All technical proposals tabled were adopted, although some political difficulties arose concerning controls of novichok precursors. COM pointed out to difficulties in discussions on Chair's statement, mainly because of diverging views concerning references to Russian aggression in Ukraine and its implications on AG. COM recalled its proposals for promotion of EU led sanctions towards Russia. COM made one presentation to AG on controlled chemicals included in Annex VII and invited all the members of AG to consider ways of aligning with these measures. The second presentation by COM was on new Dual use regulation. As a follow up, COM intends to: 1) Continue to provide information to Australia Group on RU sanctions and continue to promote alignments with AG members; 2) Promote the RU 'watch list' (similar to 'Syria' watch list in 2013); 3) Explore possible EU action on marine toxins, by considering synchronising EU alignment with US measure still this year.

In their comments, Member states highlighted importance of identifying the urgency of controlling marine toxins outside of the usual annual update to control lists, especially in light of low trade volumes of these toxins and the fact they can be controlled through catch-all, and asked to clarify US calendar for unilateral measures.

MS echoed COM assessment on AG Plenary, highlighting constructive approach to technical discussions, however deplored difficulties to adopt Chair's statement with global situation coming into picture. Some MS expressed view of AG not being the right forum for introducing and discussing proposals on alignment with RU sanctions. However, some discussions on the matter could take place in the margins of AG, although not in formal setting. One MS disagreed that multilateral export control regimes were purely technical and recalled importance to use export control regimes to advance EU view on the global situation and condemn RU aggression. COM took note of comments pertaining to controls on marine toxins and agreed to assess usefulness of such controls, and to submit its assessment for comments by MS. If MS are interested, COM will engage with US and discuss the calendar. COM will revert to the matter at next DUWP and intends to table the issue for next EU-US TTC ECWG. On RU watch list, COM agreed that export control regimes are technical but operate in a political environment; therefore, COM will continue to promote alignment through oral invitations, during informal meetings and will adjust its narrative.

b) Wassenaar Arrangement

Spain reported on the latest Licensing and Enforcement Officers Meeting that took place from 27-29 June, and was held in positive and constructive atmosphere. Concrete cases on licences and catch-all mechanisms were discussed by customs and intelligence services. LEOM focused also on issues such as ITT, new controls for brokering, outreach, post-shipment controls and risk assessment of evolving technologies.

Ireland gave short information on behalf of the Plenary Chair. Selection procedure for the new Head of Secretariat was concluded and HU candidate was selected. The second candidate, Switzerland, will support emerging consensus. The HU candidacy will be submitted to silence procedure starting on 1st September.

6. Third country cooperation

a) Norway

COM reported on export control dialogue that took place on 13 June (full report available in Delegates Portal WK 8760/22). EU was represented by COARM Chair, the rotating Presidency chair and COM. Norway was represented by MFA export control directorate.

The next meeting of the EU-NOR Dialogue should take place in October, after the autumn session of the WA Expert Group. In their comments, MS acknowledged longstanding and close cooperation

with NOR and expressed full support for the inclusion of NOR in the list of partner countries under sanctions regulation. They also asked more about NOR plans regarding ‘plan B’ for WA and invited COM to assess NOR alignment with the EU sanctions regulation. Furthermore, MS expressed interest to exchange views with NOR on controls of new technologies and emerging technologies.

b) Taiwan

COM shortly updated on trade and investment dialogue that took place with Taiwan on 2 June, at the level of COM DG and Ministers. The dialogue took place after two years interruption. The meeting focused on trade and technology topics, covering sectoral issues. Export controls was one part of exchanges of views. Discussions will pursue at technical level. A short follow-up exchange of views will take place on 14 July (virtually) and will focus on: exchange of information on export control’s regulatory and technical developments: updates to dual-use control list, controls of cyber-surveillance and emerging technologies, intangible technology transfers. EU and TW will also exchange information on export restrictions to Russia and Belarus on dual-use and advanced technologies, assessment of current export control and prospect of future actions, work with partners and options for dynamic alignment and coordinated implementation and enforcement. As a follow up, more targeted meeting is planned for this autumn.

7. Comments on China’s export control law

COM gave a short assessment of Chinese new export control law, adopted on 1 December 2020. CN had issued a ‘White Paper’ on export control on 29 Dec 2021, and implementing Regulations for comments (April-May 2022 - COM submitted comments on behalf of EU), with the objective to streamline existing DU export control rules, even out disparities, and solve “the imperfection of controls”. Key elements of the law: General Provisions (e.g. competent authority, responsibilities, management system); Control Policies, Control Lists, and Control Measures; Supervision and Administration; Legal Liability; Supplementary Provisions. EU Delegation in Beijing submitted comments on all five chapters focusing on five key concerns: rules on re-exports (on controlled foreign products), rules on deemed exports (how do they affect EU companies having production facilities in CN), objectives and scope of controls (unclear references to ‘national interests’), open-ended criteria for risk assessment of destinations and inter-links with list of technologies restricted to export in parallel legislations. CN national economic interests are visible in risk assessments – open-ended list of criteria that gives lack of predictability for exporters on risk assessments.

Additionally, also the EU Chamber of Commerce gave a feedback on the CN export control law. As key business concerns were mentioned: lack of clarity/predictability for businesses (what coding systems are to be used, who ensures post-shipment control), distance/gap between legal provisions and export practice (review period of 45 days too long; validity period of single-item licenses of 2 years too short); lack of detail on controls of intangible transfers; concerns about infringements and penalties, especially in relation to reporting obligations.

8. AOB

- Spain informed about changes in its national legislation for export controls, with inclusion of unilateral controls on some items (chemicals and telecom technology). New controls have been introduced for transits.
- Next DUWP meeting will take place on 7 September.
