



Brussels, 30 September 2023
(OR. en)

12322/23

LIMITE

DUAL USE 3
CONOP 65
CFSP/PESC 1145
COARM 208

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
September 2023

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (27.10.2023)

1. Implementation of national control lists regarding article 9(4) of Regulation (EU) 2021/821.

The Commission (DG Trade) updated on state of play regarding the publication of national control lists. MS comments were received following consultation with MS experts mid-July and DUWP meeting on 25 July. Interservice consultation is ongoing and some editorial changes can still be made. The Commission intends to publish the compiled list during the 1st half of October. The final version and translations will be shared with MS before its publication and MS will have possibility to comment.

Several MS took the floor and expressed disappointment as regards the interpretation of the Article 9 in relation to Article 10 in the template for publication proposed by the Commission. MS argued against any reference to Article 10 in application of Article 9 (4) and expressed legal concerns. MS also regretted that a session to discuss the issue was not organised by Dual Use Coordination Group. The Presidency was invited to discuss the matter at a political level.

In its explanation, the CLS highlighted that publication of a compilation on national control lists is an obligation to the Commission under the DU Regulation, Article 9 (4). However, elements falling outside this scope and suggesting new policy elements should be first discussed by the DUWP.

The Chair concluded that DUWP will be invited to convene informally on 11 October, after DUWP regular session on 10 October, to discuss implementation issues.

2. Dual use export control related policies

a) Artificial Intelligence

The Chair referred to the ES Presidency non-paper and a presentation from July DUWP meeting. He recalled that the objective of the DUWP was not to discuss the legislation which is the prerogative of the WP on Telecoms, but to bring the dual-use perspective in the discussion on the AI Act.

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DUWP will revert to the matter in October, inviting (if possible) the Chair of the Telecom WP for an exchange of views.

b) European Economic Security Strategy

The Chair of the DUWP recalled that discussions on the implementation of the European Economic Security Strategy is a priority for the Spanish Presidency, considering there are links between dual-use export control, FDI screening and outbound investment screening for economic security purposes.

The Commission (DG Trade) confirmed developments since the adoption of the Strategy in June 2023 referring to the ongoing work on the list containing critical dual use technology. The Commission expects to finalise the list and to submit it to Council by end of September. Follow-up work on the list of the critical dual-use technology will include a thorough risk assessment for some of the listed technologies by the end of the year.

On aspects related to the dual-use export controls: by the end of the year, the Commission will decide if a proposal is needed to improve the efficiency of the DU Regulation.

On Foreign Direct Investment screening, the Commission confirmed that a legal proposal to revise the current regulation is being prepared and will be adopted by end of the year.

On Outbound Investment screening, the Commission expects to present a policy initiative, as appropriate, by the end of this year. The decision on a new policy initiative will be based on input received in the framework of the new expert group. The first meeting of the group will take place on 22 September.

Referring to the questionnaire on outbound investment screening, submitted to the MS last February, the Commission highlighted that it has received answers from the majority of MS and the results showed that most of the MS did not collect data on outbound investment.

In their comments MS spoke in favour of strengthening the existing framework for export controls before considering new initiatives.

The DUWP Chair concluded that the Spanish Presidency would decide which forum in the Council will deal with relevant aspects of the economic security strategy. Different expert groups might be set up to carry out the risk assessments on listed technology.

3. Multilateral Export Control Regimes

a) Wassenaar Arrangement

Senior Officer of the Wassenaar Arrangement Expert Group briefed MS on work of WA Experts Group on establishing and maintaining Control lists. WA Experts Group provides a technical forum for Participating States to exchange information, best practices and discusses and amends control lists. High expectations are for the review of 2023. A record number of proposals has been submitted and emerging technologies feature high on the agenda (3D printing, AI, nanosatellites, quantum computing etc).

Challenges, however, remain: experts' work stopped during 2020-2021 during pandemic and is only now slowly catching up. Proposals have become very technical. Participating states have diverging agendas and different levels of technical readiness. The geopolitical situation degraded in 2022, spring EG meeting was adjourned in support to UA.

In 2023, technical debates have restarted, separated from political issues with delegations demonstrating common will to progress and to achieve a substantial an outcome.

In their comments MS drew attention to the growing number of highly technical proposals in WA, expressed gratitude for the role of the Secretariat and highly valued work in EG and its spirit of compromise, as well as expressed full commitment to WA and its functioning. They agreed that technical debate should be kept separated from political issues.

4. Implementation and Enforcement of the Regulation EU 2021/821

a) Enforcement Coordination Mechanism

The Chair recalled that an informal meeting will take place on 14 September, agenda has been shared.

b) Intangible Technology Transfer (ITT)

The Chair referred to the non-paper by the Presidency and thanked those MS who had submitted comments.

Previous discussions have shown that there is a need to adopt guidelines to clarify implementation of export controls on ITT. The objective of the Presidency is to work on a policy paper, to be submitted in October to the DUWP for a discussion and subsequent adoption by the WP by the end of the ES Presidency. The draft text will be put forward before next meeting in October.

c) Presentation of the questionnaire on EU Catch-all family

The Chair presented questionnaire on *EU Catch-all family*. Details of it will be discussed at informal meeting on 14 September. MS comments expected by 3 October.

d) The updates of Annex I

The Commission explained that the annual update of Annex I of DU Regulation is in its final phase of adoption. The Delegated Act will be transmitted to the Council and the European Parliament for two months non-objection period at the end of which the Commission will publish the Delegated Act (expected mid-November).

The Commission was invited to provide a summary of changes compared to the previous Act, which are useful for licencing authorities and exporters.

e) *Updates on work in technical groups*

The Commission briefed the DUWP on the progress in technical expert groups. Data collection guidelines for the annual report are finalised in interservice consultation, final comments will be incorporated before the text is sent to the delegations. On timeline: the document must be approved by the Council. As soon as the text is finalised by the Commission it will be circulated to DUWP for endorsement and sent to the Council via COREPER for approval. The publication is envisaged mid-November (tbc).

The Commission also reminded that for the annual report on 2022 exports, the data collection is not completed and MS were invited to finalise their submissions. In response, MS signalled technical issues which will be looked up by the Commission internally.

STEG: finalisation of the guidelines for cybersurveillance technology exports well on track. Interservice consultation to be launched in next weeks.

ETEG: common risk assessments have been finalised on two emerging technologies. MS are invited to reflect whether there is a need to keep the TEG working on other technologies.

ECM: the Presidency has plans to reinvigorate the ECM. An informal exchange will take place on 14 September on how to improve enforcement cooperation. An ECM meeting is planned on 11 October, invitations will be sent, together with the work programme which needs to be updated in light of new developments.

The Commission also highlighted that work is ongoing in DG TAXUD on enforcement of export restrictions on dual-use items, focusing as priority on UA battlefield items. The Commission considers that DU community can add value in enforcement efforts and will coordinate internally to provide more information on DG TAXUD initiatives. The issue of enforcement could also be addressed at ECM meeting in October.

5. International Atomic Energy Agency

The presidency recalled the presentation of the IAEA representatives at DUWP July meeting and exchange with MS on certain risks related to the restrictive measures imposed on Iran. **DELETED**

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6. Restrictive measures Russia/Belarus related to dual use

a) Information exchange of new measures.

The Commission recalled the latest measures were contained in the 11th package. On 7 September, due diligence guidelines were published together with DG FISMA to help European operators assess sanctions circumvention risks. A high level group meeting with partners to take place on 18 September on sanctions coordination to discuss and update List of Common High Priority Items. In this respect, the Commission invited MS to update and contribute to the list demonstrating EU's engagement.

Main focus of the Commission now is to tackle circumvention and enforce sanctions. **DELETED**

b) Information exchange and alignment with partners

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An informal meeting could be organised by the Commission on the usefulness of the info exchange with existing partners and potential new partners.

c) Update on meeting with RELEX WP

The Presidency recalled its attempts to increase the coordination and cooperation with RELEX on restrictive measures. The Chair referred to his briefing in RELEX WP on 6 September on Dual Use export controls and working methods.

It was concluded that closer contacts are needed between both groups. A joint meeting with Relex WP (1+1 format) will be organised at the end of November to discuss and agree working methods.

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7. Restrictive measures towards Iran related to dual use

No new developments since last DUWP meeting and the adoption of restrictive measures on Iranian UAVs.

8. Cooperation with third countries

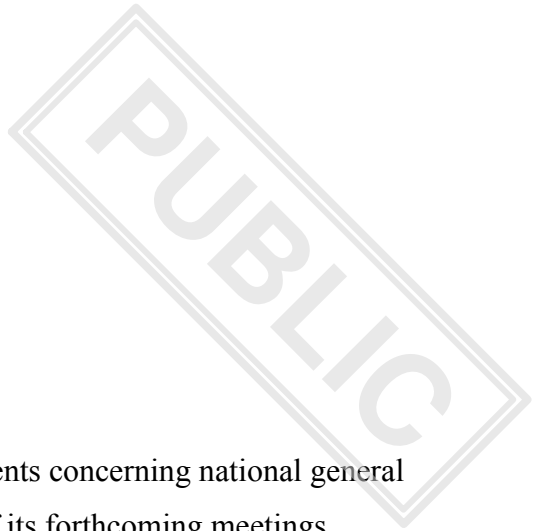
a) EU-US Trade and Technology Council – Export Control WG

Commission briefly explained that next ministerial meeting of EU-US TTC is planned for November, end of the year, but no agenda has been set yet. On Export Control WG: a stakeholders meeting took place in July, the report was uploaded on *Futurium* website. MS were invited to start preparations for next EC WG meeting, however, no meetings with the US are planned for this semester.

b) Export control dialogues

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8. AOBs

- Germany informed MS on its regulatory developments concerning national general authorisations, Germany will brief DUCG at one of its forthcoming meetings.
- MS asked the Commission to provide the information on Export control Forum 2023 in due time.

9. Next DUWP meeting: 10 October 2023
