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European Union

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LIMITE

DUAL USE 4
CONOP 66
CFSP/PESC 1146
COARM 209

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
Subject:	Outcome of Proceedings of the Working Party on Dual Use Goods of 10 October 2023

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (23.11.2023)

1. DUAL USE EXPORT CONTROL RELATED POLICIES

a) Artificial Intelligence Act

The Presidency updated MS on its initiative to bring dual-use perspective in the discussions on AI act. The legislative act is negotiated in the WP on Telecom. In Presidency's view, AI Act lacks effective control of AI in the military field, which is needed in order to have an effective control over AI technology exports. Therefore, compatibility with Regulation (EU) 2021/821 should be ensured, in order to counter risks identified from the dual use point of view, especially because that most of AI technology are intangible goods and software, which cannot be controlled by customs.

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The Commission added that AI is an emerging technology and has been identified as critical for the security on the recently adopted list of critical technology crucial for the economic security. The Commission considered that it was important to bridge different discussions and to complement,

especially in relation to potential risks to the security. As for the risk assessment on the AI, the Emerging Technology expert group would be fit for purpose.

In the ensuing exchange of views, MS agreed on the usefulness to keep a view on the matter and expressed interest to receive more detailed information from the Commission's relevant DG dealing with the AI act, as well as to invite the Chair of Telecom WP for a briefing to the DUWP on the ongoing legislative work. In addition, MS expressed support to task ETEG to work on risk assessment of AI technology.

The Chair of the DUWP concluded that for the next meeting in November, the Presidency will try to invite the Chair of Telecom WP, as well as the representatives of Commission to brief the delegates on the AI act.

b) European Economic Security Strategy

The Presidency recalled the European Economic security strategy and the importance to discuss the topic from dual-use perspective in the DUWP. The Chair of the DUWP also took note of the adoption by the Commission on 3 October of the Recommendation on critical technology areas for economic security and noted the fact that the Commission has not officially informed the Council about the adoption of the Recommendation.

In its intervention, the Commission (DG Trade) referred to the List of critical technology areas for economic security, as a first action emanating from the strategy. The List identifies 10 technologies that pose specific risks related to the security and technology leakage, one of four major risk categories identified in the strategy. The relevant communities are now invited to assess the risks, not only in relation the dual use nature of the technology, but covering broader spectrum. Referring to the listed technologies, the Commission outlined its plans to conduct with the MS the risk assessment on four most sensitive areas by the end of 2023 (semiconductors, quantum, biotech, AI). One of the existing structures, that could potentially work on the risk assessment, could be the already existing ETEG group (Emerging technology expert group).

In an extensive debate, MS welcomed the list of critical technologies, highlighted the need for clear scope and definition of the risk analysis, asked to identify the responsible fora for the work to be carried out. **DELETED**

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The Presidency insisted on the need for the Commission to forward the official requirement to the Council.

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The Chair concluded that the Commission is expected to present the Recommendation to the Council, to clarify further steps with precise timelines, give clearer instructions on how DUWP or the Council can contribute and explain the criteria for risk assessment from the export control view (non-proliferation risks/ risks to internal security).

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

a) Update of the EU control List

The Commission informed the DUWP that the annual update in form of Commission Delegated Regulation was adopted on 15 September, the Delegated Act was sent to the Council and the European Parliament for the two months scrutiny period. If no objection is received from the Council and EP, the DA will be adopted by December.

b) Guidelines

Guidelines on data collection and transparency: the Commission explained that the interservice consultation was concluded, translations have been requested. In the meantime, the text was sent to the Council for the approval of the DUWP as requested by the Article 26 of the Dual use Regulation.

On timeline: translations by Commission services will be ready by the end of October.

After that, the Commission will send the translations to the Council and will launch internal adoption process in the Commission. Since the Guidelines should be made available both by the Commission and the Council, the Commission expects guidelines to be endorsed by the COREPER and adopted by the Council at the same time when the Commission publishes them in form of a Recommendation. The Commission confirmed that the version sent to the DUWP will be public. One MS had a scrutiny reservation on the final text, therefore, DUWP was not in a position to endorse the guidelines. The text of guidelines (WK 12802/23) was placed under written consultation ending 13 October.

GSC explained that more precise timeline for CRP/Council approval will be communicated later, depending on the progress in the Commission.

MS asked about the future of DTC-TEG and saw value to keep the forum running for the implementation issues. COM explained that the mandate of the TEG was concluded, however, MS can decide on keeping the forum open for further guidance. The issue will be raised at the upcoming Dual Use Coordination Group on 16 October.

On 2022 data collection for the annual report: the Commission invited MS to proceed as soon as possible. Deadline for data submission was end of September.

The Commission also announced that Commission Staff working document on Statistical update on dual-use export control (2021) will be published soon.

c) Enforcement Coordination Mechanism

The Presidency referred to its non-paper on re-activation of the ECM. According to the timeline proposed in July, the DUWP will discuss a new version of the outcome document at its November meeting, to allow for its endorsement in December. A presentation will take place at LEWP (Customs) group, after which the comments will be received from customs authorities and their input incorporated into the new version of the outcome document.

Delegations were also reminded that an ECM meeting is scheduled to take place on 11 October.

Concerning the second document on ECM role in sanctions enforcement, MS were cautious as to not create parallel discussions or duplicate work on enforcement.

The topic will be also raised at the ECM on 11 October.

d) Intangible Technology Transfers (ITT)

The Chair of DUWP referred to the non-paper by the Presidency outlining idea for a ‘WP conclusions’ on the ITT. The rationale would be to operationalise the debate on ITT controls, initiated by the previous presidencies. The aim of WP conclusions would be to invite the Commission to start work on the guidelines for exporters.

MS broadly endorsed the idea and welcomed Presidency’s proposal. They also supported the creation of a new TEG to work on guidelines. Also the Commission considered the proposal positively. The issue will be discussed at the DUCG.

The Presidency set a deadline by 20 October for the MS to comment on the draft conclusions and to submit written proposals.

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

MS were reminded about the previous discussions on the issue. The Commission updated on the upcoming publication of national control lists regarding Art 9(4). NL/ES lists are currently being processed. The text is translated and translation process will be concluded by next week.

Publication in the OJ expected one week after.

DUCG will discuss the implementation of Art.9/10 at its meeting on 16 October, also in relation to future publications. MS were invited to send possible amendments and improvements.

COM added that the DUCG will have a TdT on national legal basis which MS use for their national lists. A TdT will be also held to gather MS positions on implementation of Art.10, main purpose being to hear from MS how they would ensure effective implementation of articles 9 and 10.

The Chair concluded that the debate will continue in the DUCG.

3. Questionnaire about EU Catch-all family.

The Chair of DUWP recalled the questionnaire. Until now, 16 MS have replied. The Presidency invited the rest of MS to provide answers in order to analyse the results at November meeting in an aggregated manner.

4. Restrictive measures related to dual use.

a) Update on cooperation with RELEX WP

The Chair of DUWP explained that after the efforts to revise DUWP mandate and to make cooperation with RELEX effective, both groups will have a DUWP meeting in +1 format in collaboration with RELEX **on 29 November** to discuss and agree on working methods.

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b) Coordination on restrictive measures

COM recalled its two-fold approach: coordinated implementation of sanctions and work on new sanctions. **DELETED**

PRES recalled the discussion on working methods and repeated that DUWP can engage only when the official proposal is on the table.

c) Enforcement and circumvention

On behalf of the EU Special Envoy for sanctions implementation David O’Sullivan, the Commission (DG Fisma) briefed the DUWP on the actions carried out by the Special Envoy since January 2023. Regular debriefings in COREPER are taking place, as well as in RELEX WP.

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circumvention may have a spill-over effect over the general EU-TR relationship which TK would not like to undermine, therefore, there might be hope for an improvement in efforts from TK side.

Big challenges in terms of circumvention are coming from China and India. No plan for the SE to travel to CN yet.

Efforts of the SE will be also dedicated to the enforcement measures, and to the mapping of high risk exporter countries and to reaching out to them.

Presentation by the Commission on sanctions circumvention

COM (DG Trade) complemented the presentation of DG Fisma by some slides **DELETED**

Closing the debate, the Commission made a call to support the Enforcement Coordination Mechanism in focusing on sanctions enforcement, by detecting actual transactions, matching and analysing export data. A presentation by DG Taxud will be made at ECM meeting on 11 October.

d) Capacity building

COM (DG Reform) briefed the DUWP on the Technical Support Instrument and how it can assist, through a tailor-made approach, national authorities in improving the implementation and enforcement of sanctions. The technical support is provided either through COM in-house expertise or indirectly by other international organisations, MS experts or private sector experts.

Focusing on two multi-country projects, with one of them already finalised, the briefer outlined positive results achieved in terms of mapping practices of national administrations regarding asset freezing, mapping of approaches in sanctions implementation, analysis of strengths and weaknesses of various asset freezing exercises.

Concerning possible avenues for support of implementation of trade sanctions, DG Reform outlined needs for mapping and identifying gaps as regards powers and mandates of national competent authorities for an effective cooperation, infrastructure and data analysis capabilities, data gaps on trade routes and infrastructure, legal review of the interplay between applicable legislation (customs code vs sanctions). Capacity building and knowledge sharing were also mentioned between potential avenues for support.

DG Reform also outlined some challenges, such as importance of a clear identification of MS needs, articulation between different COM services: DG Fisma, DG Trade, DG Reform, finding appropriate provider.

MS took note that the submission of requests for support by MS is 31 October each year and invited interested MS to take contact with their national focal points for more detailed information

e) Information exchange with partners

The COM updated that no new exchange of data was carried out. Those MS who are interested in data exchange, were invited to consult the COM bilaterally.

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5. Multilateral Export Control Regimes.

- Wassenaar Arrangement

The Presidency explained that substantial discussions took place in WA Expert group over the last 2 weeks in Vienna. Spirit in the room was cooperative, the discussions were fruitful. Some separate technical groups were set up.

WA work will continue with the GWG meeting.

6. Cooperation with Third Countries

- Export control dialogues

COM informed that a High Level Dialogue on Trade took on 25 September with VP Dombrovskis travelling to China. In his visit, two issues relating to export controls were raised. First, the EU approach to export controls as reflected in the European economic security strategy (de-risking, not de-coupling) and secondly, the unilateral CN controls on gallium and germanium, notably, in light of the impact of these controls on supply chains.

Furthermore, the EU raised concerns regarding the effects of RU was of aggression and the role that CN plays in this context. Dombrovskis strongly called on CN partners to refrain from undermining sanctions and backfilling.

Both parties agreed on holding an export control dialogue at technical level. Over the next weeks, the Commission will discuss modalities with CN counterpart. The date not set yet, but EU had proposed October. In the meantime, the COM reiterates call to MS to put forward topics to be discussed during such dialogue.

7. AOBs

Italy informed DUWP about its upcoming Export Control forum (21 November), to be organized in cooperation with the Ministry of Foreign Affairs, in association of companies. Various panels will cover geopolitics, export control system, exports of cybersurveillance, latest developments and exchanges with companies. The forum will be web streamed (in Italian).

France updated on its annual national report on dual use exports. The report is public and available for consultation.

8. Next DUWP meeting: 07 November 2023, 29 November (with RELEX WP)