

13463/99

LIMITE

PESC	427
COMER	114
ECO	393
UD	124
ATO	115

OUTCOME OF PROCEEDINGS

of: Ad hoc Working Party on Dual-use Goods

on: 26 November 1999

1. **Commission proposal for a Council regulation setting up a Community regime for the control of exports of dual-use goods and technology (docs. 8888/98 + COR 1, 12157/99)**

The Presidency noted that on 25 November the Permanent Representatives' Committee, following discussion on the basis of the Presidency's report (doc. 12304/99),

- had instructed the ad hoc Working Party to reach agreement on Annex IV, on the basis of the Presidency/Commission proposal contained in Annex 1 to document 12304/99, and bearing in mind the fact that the list of items subject to intra-Community controls should be as short as possible; the French delegation had noted that it felt the ad hoc Working Party should reconsider the list of items controlled, in particular as regards nuclear items;
- had confirmed that the ad hoc Working Party should aim to agree on a list of items to be excluded from the Community General Export Authorisation, (Annex II to the Regulation) which should correspond to the list of items subject to intra-Community controls (Annex IV);
- had considered that the list of countries for which the CGEA shall be granted should be further discussed once work on the other issues has been finalised;
- had invited delegations which still have reservations to reconsider their position on the extension of the catch-all clause in the framework of a global compromise;
- had invited delegations to finalise discussions on the draft joint action, although its adoption is not necessarily linked to the adoption of the Regulation,

- had instructed the ad hoc Working Party to continue its work, in the light of the above, and to report back to it.

The Presidency invited delegations to pursue discussions in the light of the guidance provided by the Permanent Representatives' Committee.

1.1 Annex IV (intra-Community controls) (DS 41/99, DS 43/99, DS 44/99, DS 45/99, DS 46/99, DS 47/99, DS 49/99, DS 50/1/99, DS 53/99)

The Commission representative introduced DS 50/1/99, a further revised Commission/Presidency draft proposal for Annex IV (reproduced as Annex 1 to document 12304/99), pointing out that attempts had again been made to take into account concerns expressed by delegations in connection with the previous draft. Discussions under the various headings can be resumed as follows:

PART I

(possibility for national general authorisation for intra-Community trade)

- items of Community strategic control

The United Kingdom delegation repeated its request for items 1C238, 3A229 and 3A232 to be transferred to Part II of Annex IV. However, in the spirit of compromise, since the German delegation insisted these items should remain in Part I, the United Kingdom delegation withdrew its request.

- items of Community strategic control (cryptographic equipment)

The French delegation introduced DS 53/99 which attempts to clarify the proposals concerning controls on cryptographic equipment, put forward previously in DS 43/99: the French delegation supported the idea that intra-Community transfers should be as free from controls as possible (taking security concerns into account); the three categories of cryptographic equipment which it felt should be subject to intra-Community controls have few commercial applications; however, DS 53/99 contains the suggestion that exports of practically all cryptographic equipment should be subject to harmonised global or, for the most sensitive items, individual, authorisations.

The German delegation was unable to support DS 53/99 and, in connection with the proposal to harmonise global export authorisations, referred to a Resolution concerning the principle of mutual recognition recently adopted by the Internal Market Council.

The Commission representative felt that the French proposals would cause difficulties for exporters. In particular, he felt that to subject products imported from third countries to authorisation for re-export would run counter to WTO rules (if they had not undergone any transformation on EU territory).

The Irish, Belgian, and Portuguese delegations required time to analyse the French proposals, and the Finnish delegation placed a reservation on DS 53/99. The Presidency called on delegations to reflect on the French proposals concerning export controls as soon as possible.

The German, Irish, Belgian, Netherlands, Finnish, Italian, Swedish, Austrian and Portuguese delegations, as well as the Commission representative, repeated their preference not to subject cryptographic equipment to intra-Community controls. The Commission representative The Finnish, Italian, Irish and Luxembourg delegations could agree to impose intra-Community controls on very sensitive cryptographic items by way of compromise. The United Kingdom delegation agreed that very sensitive cryptographic equipment should be controlled.

The Commission representative undertook to include controls for very sensitive cryptographic equipment in a new draft proposal for Annex IV, and called on delegations to submit suggestions for wording.

- Items of MTCR technology

The Presidency noted the ad hoc Working Party had agreed that in principle only MTCR category 1 items should be included under this heading, but that there remained a certain degree of confusion as to precisely which items (as defined in Annex I of the EU legislation) were involved.

The German delegation felt that too many items were listed under this heading in DS 50/1/99, and undertook to table a paper containing a reasoned list of MTCR items which it considered should be subject to intra-Community controls.

The French delegation considered that more MTCR items than those listed in the present draft should be subject to intra-Community controls, and undertook to submit proposals.

The United Kingdom delegation was unable to agree to exemptions 2, 3 and 4 in relation to transfers of MTCR technology as set out in DS 50/1/99. Such exemptions, which concerned very sensitive items, could not be enforced by customs authorities.

PART II

(no possibility for national general authorisation of intra-Community trade)

- Items of NSG technology

The United Kingdom delegation requested the following wording for the exemption clause for this category:

"For **0C003 and 0C004**, only **if** for use in a "nuclear reactor" (see also **within 0A001.a**)."

The German delegation referred to its paper, DS 49/99, stating its reasoned objections to the inclusion under this heading of any items other than those listed in Category 0 of Annex I to the EU legislation.

The French delegation referred to DS 12/99, setting out its reasons for wanting to include the following items under this heading:

6A203.a	6A226	3A228	3A201.a
6A203.b	1C239	3A229	3E201
6A225	1E201	3A232	6E201

The Commission representative suggested that exemptions might be made for certain limited quantities of tritium and lithium.

The Commission representative undertook to draft a further revised proposal for Annex IV on the basis of the above discussion, and the Presidency called upon delegations to submit comments in writing in order to assist the Commission in its work.

1.2 Annex II (Community General Export Authorisation)

The Presidency referred to the guidance given by the Committee of Permanent Representatives on this question (see second indent of paragraph 1 on page of the present outcome of proceedings).

The Greek delegation lifted its reservation. The United Kingdom, Netherlands and German delegations were not able to lift their reservations.

1.3. Annex IIIa (model form)

The United Kingdom delegation felt that the draft model form could be improved upon (certain boxes appeared superfluous, and the text in others was unclear). Although it had participated in meetings of the coordination group which had drawn up the model form, the United Kingdom authorities had not so far used the model form, but intended to do so in future. It undertook to submit written comments, further to which the Commission Services might draw up a revised draft.

1.4 Articles of the draft regulation and draft statements for the Council Minutes (doc.12157/99, DS 48/99, DS 51/99, DS 52/99)

Delegations were asked to comment on the proposed wording for the articles of the draft regulation and the draft statements for the Council minutes as they appear in Annexes 1 and 2 to document 12157/99. The texts resulting from such discussions are set out in Annexes 1 and 2 hereto.

2. Proposal for a joint action on intangible transfer of technology and provision of technical services (doc. 12304/99 Annex 3)

The Presidency reminded delegations of the Permanent Representatives Committee's recommendation that discussion of the draft joint action should not delay adoption of the draft regulation.

The Netherlands delegation had not come to a decision as to whether to withdraw its proposal that technical assistance related to weapons of mass destruction should be prohibited rather than subject to authorisation.

The German delegation felt that discussion of the draft joint action could not be separated from discussion of the draft Regulation, and referred to the Swedish Ambassador's request to deal swiftly with the matter; indeed, it considered the draft joint action (once the Netherlands withdrew its reservation) was almost ripe for adoption; it was important to fill the gaps in the draft regulation without delay.

The French delegation considered there was no urgent need to adopt the Joint Action, and that the German draft needed further clarification; in addition, the French delegation was of the opinion that the ad hoc Working Party on Dual Use Goods was not necessarily the right forum to discuss the draft joint action.

3. Amendments to control lists in the various export control regimes

The Technical Secretariat informed the meeting that further to changes agreed or shortly to be agreed in the various export control regimes, each category in the EU list would require amendment. It therefore seemed reasonable to publish a consolidated version of the annexes to the CFSP decision, for ease of reference. A draft amended list, together with explanatory "change notes" and a draft amending decision, would be prepared and emailed to delegations by mid-January 2000, in the hope they could be agreed by a special "list" meeting of the ad hoc Working Party towards the end of January. Further to such meeting, the draft amending decision and the consolidated annexes could be finalised, adopted by Council and published, hopefully during the month of March.

Suggested revised wording for Commission Proposal (COM(98)257 final) in the light of discussions in the ad hoc Working Party on Dual Use Goods

Preamble¹

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission²,

Having regard to the Resolution of the European Parliament³

- (1) Whereas dual-use items (dual-use goods, including software and technology) should be subject to effective control when they are exported from the Community;
- (2) Whereas an effective common system of export controls on dual-use items is necessary to ensure that the international commitments of the Member States and the European Union, especially regarding non-proliferation, are complied with;
- (3) Whereas the existence of a common control system and harmonised policies for enforcement and monitoring in all Member States is a prerequisite for establishing the free movement of dual-use items inside the Community;
- (4) Whereas the current regime of export controls on dual-use items established by Council Regulation (EC) No 3381/94⁴, as amended by Regulation (EC) No 837/95⁵, and Council Decision 94/942/CFSP⁶, as last amended by Decision 99/193 CFSP⁷, needs to be further harmonised in order to guarantee the effective application of controls;

¹ The preamble was not discussed as its content would depend on the outcome of deliberations on certain outstanding questions.

² OJ C 399, 21. 12. 1998, p.1

³ Resolution of 13 April 1999

⁴ OJ L 367, 31.12.1994, p. 1.

⁵ OJ L 90, 21.4.1995, p. 1.

⁶ OJ L 367, 31.12.1994, p. 8.

⁷ OJ L 73, 19.3. 1999, p. 1.

- (5) Whereas common lists of dual-use items, destinations and guidelines are essential elements for an effective export control system; whereas such lists have been established by Decision 94/942/CFSP and subsequent amendments, and should be incorporated into the present Regulation;
- (6) Whereas the responsibility for deciding on applications for export licences lies essentially with national authorities; whereas national provisions and decisions affecting exports of dual-use items must be taken in the framework of the Common Commercial Policy;
- (7) (former 7 deleted) Whereas decisions to update the list of controlled products must be in full conformity with the obligations and commitments that each Member State has accepted as a member of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties.
- (8) (former 8 deleted) Whereas transmission of technology by means of electronic media, fax and telephone to destinations outside the Community should also be controlled;
- (9) Whereas particular attention needs to be paid to issues of re-export and end-use;
- (10) Whereas the Ministers for Foreign Affairs of the Member States adopted, on 20 November 1984, the Declaration of Common Policy, which was subsequently also adopted by Spain, Portugal, Austria, Finland and Sweden, which covers in particular the arrangements concerning intra-Community transfers of separated plutonium and of uranium enriched to more than 20%, as well as of installations, the main components of crucial importance and technology related to reprocessing, to enrichment and to the production of heavy water;
- (11) Whereas the Community has adopted a body of customs rules, contained in Council Regulation (EEC) No 2913/92⁸, as last amended by Regulation (EC) No 82/97 of the European Parliament and of the Council⁹ (the Community Customs Code) and Commission Regulation (EEC) No 2454/93¹⁰, as last amended by Regulation (EC) No 502/99¹¹, which lay down, among other things, provisions relating to the export and re-export of goods; whereas nothing in this Regulation constrains any powers under and pursuant to the Community Customs Code and its implementing provisions;

⁸ OJ L 302, 19.10.1992, p. 1.

⁹ OJ L 17, 21.1.1997, p. 1.

¹⁰ OJ L 253, 11.10.1993, p. 1.

¹¹ OJ L 65, 12.3.1999, p. 1.

- (12) Whereas Member States should, when considering conditions concerning re-export or end-use of dual-use items, take into account relevant principles of international law;
- (13) Whereas, in order to ensure that this Regulation is properly applied, each Member State should take measures giving the competent authorities appropriate powers;
- (14) Whereas each Member State should determine the penalties to be imposed in the event of breach of the provisions of this Regulation;
- (15) Whereas in view of the foregoing, Regulation (EC) No 3381/94 should be repealed,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Subject and definitions

Article 1

This Regulation sets up a Community system of export controls for dual-use items.

Article 2

For the purpose of this Regulation:

- [(a) “dual-use items” shall mean goods, including software and technology, which can be used for both civil and military purposes, and shall include all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices] ¹²;

¹² NL had a reservation on this sub-paragraph.

- (b) “export” shall mean a procedure referred to in Article 161 of the Community Customs Code under which Community goods temporarily or definitively leave the customs territory of the Community. It includes re-export, that is to say a transaction of the kind referred to in Article 182 of the Community Customs Code by which non-Community goods leave the customs territory of the Community. “Export” shall also mean transmission of software or technology by electronic media, fax [and telephone]¹³ to a destination outside the Community;
- (c) “Exporter” shall mean any natural or legal person on whose behalf the export declaration is made, i.e. the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of the Community. If no export contract has been concluded or if the holder of the contract does not act on its own behalf, the power for determining the sending of the item out of the customs territory of the Community shall be decisive.
“Exporter” shall also mean any natural or legal person who decides to transmit technology or software by electronic media, fax and telephone to a destination outside the Community.

Where the benefit of a right to dispose of the dual-use item belongs to a person established outside the Community pursuant to the contract on which the export is based, the exporter shall be considered to be the contracting party established in the Community.

- (d) “export declaration” shall mean the act whereby a person indicates in the prescribed form and manner the wish to place dual-use items under an export or re-export procedure.

CHAPTER II

Scope

Article 3

1. An authorisation shall be required for the export of the dual-use items listed in Annex I.

¹³ UK referred to DS 40/99 suggesting the addition of a new paragraph (Article 2.2) as follows: "This Regulation shall apply to the oral transmission of technology by telephone only where technology is contained in a document and the relevant part of the document is read out over the telephone, or is described over the telephone in such a way as to achieve substantially the same result as if the relevant part of the document were exported".
NL/A/I supported the UK suggestion. The Cion undertook to endeavour to "fine tune" the suggested text.

2. In pursuance of Article 4 or Article 5, an authorisation may also be required for the export to all or certain destinations of certain dual-use items not listed in Annex I.
3. This Regulation does not apply to the supply of services or the transmission of technology requiring cross-border movement of natural persons.
4. This Regulation does not apply to dual-use items which only pass through the territory of the Community, that is those which are not assigned a customs-approved treatment or use other than the external transit procedure or which are merely placed in a free zone or free warehouse and where no record of them has to be kept in an approved stock record.

Article 4

1. An authorisation shall be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the competent authorities of the Member State in which he is established that the items in question are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons.
- 2.¹⁴ An authorisation shall also be required for the export of dual-use items not listed in Annex I if the purchasing country or country of destination is subject to an arms embargo imposed by a binding resolution of the Security Council of the United Nations or an arms embargo decided by a common position or a joint action adopted by the Council of the European Union or by a decision of the OSCE, and if the exporter has been informed by the authorities referred to in paragraph 1 that the items in question are or may be intended, in their entirety or in part, for a military end-use. For the purposes of this paragraph, "military end-use" shall mean:

¹⁴ NL maintained its reservation concerning the extension of the "catch-all" clause to conventional arms, but noted that depending on the outcome on the "total package" as it emerged from discussions, it may be able to lift its reservation.

- (a) incorporation into military items listed in the military list of Member States;
 - (b) use of production-, test- or analytical equipment and components therefor, for the development, production or maintenance of military items listed in the above-mentioned list;
 - (c) use of any unfinished products in a plant for the production of military items listed in the above-mentioned list.
3. An authorisation shall also be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the authorities referred to in paragraph 1 that the items in question are or may be intended, in their entirety or in part, for use as parts or components of military items listed in the national military list that has been exported or reexported from the territory of that Member State without authorisation or in violation of an authorisation prescribed by national legislation of that Member State.
4. If the exporter is aware that unlisted dual-use items are intended, in their entirety or in part, for one of the purposes referred to in paragraphs 1, [2 and 3]¹⁵, he must notify the authorities referred to in paragraph 1, which will decide whether or not it is expedient to make the export concerned subject to authorisation.
5. A Member State which imposes an authorisation requirement, in application of paragraphs 1 to 4 on an unlisted dual-use item, shall inform the other Member States [and the Commission]¹⁶. The other Member States shall give all due consideration to this information and shall inform, to the extent possible, their customs offices and other relevant national authorities.
6. The provisions of Article 9.2 and 9.3 shall apply to cases concerning unlisted dual-use items.

¹⁵ UK maintained its reservation on the inclusion of references to paragraphs 2 and 3 in this "awareness" clause.

¹⁶ UK/L expressed reservations on these three words.

Article 5

1. A Member State may prohibit or make subject to authorisation the export of dual-use items not listed in Annex I for reasons of public security or human rights considerations.
2. Member States shall notify any measures adopted pursuant to paragraph 1 to the Commission immediately after their adoption and indicate the precise reasons for the measures.
3. Member States shall also immediately notify the Commission of any modifications to measures adopted pursuant to paragraph 1.
4. The Commission shall publish the measures notified to it pursuant to paragraphs 2 and 3 in the “C” series of the *Official Journal of the European Communities*.

CHAPTER III

Export authorisation

Article 6

1. A Community General Export Authorisation as set out in Annex II is established by this Regulation.
2. For all other exports subject to this Regulation, the authorisation shall be granted by the competent authorities of the Member State where the exporter is established. Subject to the restriction specified in paragraph 3, this authorisation may be an individual, global or general authorisation.

The authorisation shall be valid throughout the Community.

The authorisation may be subject, if appropriate, to certain requirements and conditions, such as the obligation to provide an end-use statement.

3. [Items listed in Part 2 of Annex II shall not be subject to a general authorisation].¹⁷
4. Member States shall indicate in general authorisations that these may not be used if the exporter has been informed by his authorities or if he is aware that the items in question are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons.
- [Member States shall indicate in general authorisations that these may not be used if the exporter has been informed by his authorities or if he is aware that the items are or may be intended for a military end-use in a country subject to a UN, EU or OSCE arms embargo as defined in article 4, paragraph 2 of this Regulation]¹⁸
5. Member States shall maintain or introduce in their respective national legislation the possibility of granting a global authorisation to a specific exporter in respect of a type or category of dual-use items which may be valid for exports to one or more specified countries.
6. Member States shall furnish the Commission with a list of the competent authorities empowered to grant export authorisations for dual-use items.

The Commission shall publish the list of these authorities in the "C" series of the *Official Journal of the European Communities*.

¹⁷ DE maintained its reservations on this clause.

¹⁸ UK/NL maintained reservations on this paragraph. UK noted that its reservations concerned only the words "or if he is aware" (line 2).

Article 7

1. If the dual-use items in respect of which an application has been made for an individual export authorisation to a destination not specifically mentioned in Annex II or to all destinations in the case of very sensitive dual-use items which are referred to in Annex IV are or will be located in a different Member State, that fact shall be indicated in the application. The competent authorities of the Member State to which the application for authorisation has been made shall immediately consult the competent authorities of the Member State or States in question and provide the relevant information. The Member State or States consulted shall make known within ten working days, any objections it or they may have to the granting of such an authorisation, which shall bind the Member State in which the application has been made.

If no objections are received within ten working days, the opinion of the Member State consulted shall be regarded as positive.

In exceptional cases, the Member State consulted may request the extension of the ten-day period. However, the extension may not exceed 30 working days.

2. If an export might prejudice its essential security interests, a Member State may request another Member State not to grant an export authorisation or, if such authorisation has been granted, request its annulment, suspension, modification or revocation. The Member State receiving such a request shall immediately engage in consultations of a non-binding nature with the requesting Member State, to be terminated within ten working days.

Article 8

In deciding whether or not to grant an export authorisation, the Member States shall take into account¹⁹:

¹⁹ UK, supported by L) requested insertion of the words "**all relevant considerations including**". D/I could not agree to such insertion.

- (a) the obligations and commitments they have each accepted as a member of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties;
- (b) their obligations under sanctions imposed **[in particular]**²⁰ by a binding resolution of the Security Council of the United Nations or by a common position or a joint action adopted by the European Union or by a decision of the OSCE;
- (c) considerations of national foreign and security policy, including those covered by the European Union Code of Conduct on arms exports;
- (d) considerations about intended end-use and the risk of diversion.

Article 9

1. Exporters shall supply the competent authorities with all relevant information required for their applications for authorisation.
2. The competent authorities, acting in accordance with this Regulation, may refuse to grant an export authorisation and may annul, suspend, modify or revoke an export authorisation which they have already granted. Where they refuse, annul, suspend, substantially limit or revoke an authorisation, they shall inform the competent authorities of the other Member States [and the Commission]²¹ thereof and exchange the relevant information with the other Member States and [the Commission]²¹, while complying with the provisions of Article 15(3) concerning the confidentiality of such information.
- [3. A Member State, before granting an individual export authorisation for an export of an identical or essentially identical item in an identical or essentially identical case that has been denied authorisation by another Member State, shall consult that Member State. If the first-mentioned Member State decides, after those consultations, to grant an export authorisation, it shall immediately inform the other Member States [and the Commission]²¹ of its decision, and provide all relevant information on the reasons for the decision.]²²

²⁰ D proposed the insertion of these two words in order to accommodate the UK concerns as set out in footnote 19.

²¹ UK/L entered reservations on the requirement for Member States to notify the Commission of denials, etc. They felt such notification should be optional. The Presidency urged UK/L to lift their reservations; the Cion required this information in order to be able to fulfil its obligations.

²² F entered a reservation on this paragraph, which it considers is more restrictive than the EU Code of Conduct on arms exports. UK suggested the Cion might examine the EU Code of Conduct to establish whether this paragraph needed adjustment.

Article 10

1. All individual and global export authorisations shall be issued on forms in accordance with the model set out in Annex III a.
2. At the request of exporters, global authorisations that contain quantitative limitations shall be split.
3. National general authorisations shall be published in accordance with national laws and practices. They shall be issued in accordance with the indications set out in Annex IIIb.

CHAPTER IV **Updating of list of dual-use items**

Article 11

The lists of dual-use items set out in Annex I and Annex IV shall be updated in conformity with the relevant obligations and commitments, and any modification thereof, that each Member State has accepted as a member of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties.²³

²³ The Presidency clarified that the envisaged procedure for updating the Annexes would be as follows:

- any delegation (in practice this was likely to be the UK Technical Secretariat) could submit to the competent Working Party (presumably the ad hoc Working Party on Dual Use Goods would remain such competent body) suggestions for amendments in order to align the EC regulation with decisions taken in international fora ;
- if consensus was reached within the Working Party that the suggested amendments were appropriate, the Commission would put forward an amending proposal;
- the Commission was of course at liberty to put forward proposals, whenever it thought fit, on its own initiative or at the request of one delegation.

The Cion stated that it would make every effort to ensure consensus within the Working Party before making a proposal.

CHAPTER V Customs procedures

Article 12

1. When completing the export formalities at the customs office responsible for handling the export declaration, the exporter shall furnish proof that the export has been duly authorised.
2. A translation of any documents furnished as proof into the official language or one of the official languages of the Member State where the declaration is presented may be required of the exporter.
3. Without prejudice to any powers conferred on it under, and pursuant to, the Community Customs Code, a Member State may also, for a period not exceeding ten working days, suspend the process of release for export from its territory, or, if necessary, otherwise prevent the dual-use items listed in Annex I which are covered by a valid authorisation from leaving the Community via its territory, where it has grounds for suspicion that:
 - (a) relevant information was not taken into account when the authorisation was granted, or
 - (b) circumstances have materially changed since the grant of the authorisation.

In such cases, the competent authorities of the Member State which granted the export authorisation shall be consulted forthwith in order that they may take action pursuant to Article 9(2). If those authorities decide to maintain the authorisation or if no reply is received within ten working days, the dual-use items shall be released immediately.

- [4. Several delegations requested the insertion here of Article 10 paragraph 4 of Council Regulation (EC) 3381/94]²⁴

²⁴ GR/UK wished to retain here the current Article 10.4 which allows a Member State, in exceptional circumstances, to prevent dual-use goods from leaving the Community via its territory even though the export was duly authorised. D maintained a scrutiny reserve on the retention of this clause. The Cion (supported by B) felt that this would be in contradiction to the principle that an export authorisation shall be valid throughout the Community.
Discussion of this point would be pursued at a future meeting of the Working Party.

Article 13

1. Member States may provide that customs formalities for the export of dual-use items may be completed only at customs offices empowered to that end.
2. Member States availing themselves of the option set out in paragraph 1 shall inform the Commission of the duly empowered customs offices. The Commission shall publish the information in the “C” series of the *Official Journal of the European Communities*.

Article 14

The provisions of articles 463 to 470 and 843 of Regulation (EEC) No 2454/93 apply to the restrictions relating to the exportation, reexportation and exit of the customs territory of dual-use items covered by this Regulation.

CHAPTER VI **Administrative cooperation**

Article 15

1. Acting in liaison with the Commission, Member States shall take all appropriate measures to establish direct cooperation and exchange of information between competent authorities, in particular to eliminate the risk that possible disparities in the application of export controls may lead to a deflection of trade, which could create difficulties for one or more Member States.
2. Member States shall take all appropriate measures to establish direct cooperation and exchange of information between competent authorities on sensitive end-users with a view to providing a consistent level of guidance to exporters concerned by this Regulation.
3. Council Regulation (EC) No 515/97 of 13 March 1997²⁵, and in particular the provisions on the confidentiality of information, shall apply *mutatis mutandis*, without prejudice to Article 19 of this Regulation.

²⁵ OJ L 82, 22.3.1997, p. 1.

CHAPTER VII

Control measures

Article 16

1. The exporters shall keep detailed registers or records of their transactions, in accordance with the practice in force in the respective Member States. Such registers or records shall include in particular commercial documents such as invoices, manifests and transport and other dispatch documents containing sufficient information to allow the following to be identified:
 - (a) the description of the dual-use items;
 - (b) the quantity of the dual-use items;
 - (c) the name and address of the exporter and of the consignee;
 - (d) where known, the end-use and end-user of the dual-use items.
2. The registers and records and the documents referred to in paragraph 1 shall be kept for at least three years from the end of the calendar year in which the export took place. They shall be produced to the competent authorities of the Member State in which the exporter is established on request.

Article 17

In order to ensure that this Regulation is properly applied, each Member State shall take whatever measures are needed to permit its competent authorities:

- (a) to gather information on any order or transaction involving dual-use items;
- (b) to establish that the control measures are being properly applied, which may include in particular the power to enter the premises of persons with an interest in an export transaction.

CHAPTER VIII

General and final provisions

Article 18

1. A Coordinating Group chaired by a representative of the Commission shall be set up. Each Member State shall appoint a representative to the Coordinating Group.

The Coordinating Group shall examine any question concerning the application of this Regulation which may be raised either by the chairman or by a representative of a Member State and, in particular, the measures which should be taken by Member States to inform exporters of their obligations under this Regulation.

2. The Coordinating Group may, whenever it considers it to be necessary, consult organisations representative of exporters concerned by this Regulation.

Article 19

Each Member State shall take appropriate measures to ensure proper enforcement of all the provisions of this Regulation. In particular, it shall lay down the penalties applicable to infringements of the provisions of this Regulation or of those adopted for its implementation. Those penalties must be effective, proportionate and dissuasive.

Article 20

Each Member State shall inform the Commission of the laws, regulations and administrative provisions adopted in implementation of this Regulation, including the measures referred to in Article 19. The Commission shall forward the information to the other Member States. Every three years the Commission shall present a report to the European Parliament and the Council on the application of this Regulation. Member States shall provide to the Commission all appropriate information for the preparation of the report.

Article 21²⁶

1. An authorisation shall be required for intra-Community transfers of items listed in Annex IV. This authorisation shall not be a general authorisation for items listed in Annex IV, part 2.
2. (a) A Member State may require an authorisation for the transfer of dual-use items from its territory to another Member State in cases where at the time of transfer:
 - the operator knows that the final destination of the items concerned is outside the Community;

²⁶ The text of this article has basically been agreed upon, on condition that a solution can be found to the contents of Annex IV.

- export of those items to that destination is subject to an authorisation requirement pursuant to Articles 3, 4 or 5 in that Member State, and the export in question directly from its territory is not authorised by a general authorisation or a global authorisation;
 - no processing or working as defined in Article 24 of the Community Customs Code is to be performed on the items in the Member State to which they are being transferred.
- (b) The transfer authorisation must be applied for in the Member State from which the dual-use items are transferred.
- (c) In cases where the subsequent export of the item has already been accepted, in the consultation procedures set out in article 7, by the Member State from which the items are being transferred, the transfer authorisation shall be issued to the operator immediately, unless the circumstances have substantially changed.
- (d) A Member State which adopts such legislation informs the Commission and the other Member States of the measures it has taken. The Commission shall publish this information in the C-Series of the Official Journal of the European Communities.
3. The measures pursuant to paragraphs 1 and 2 shall not involve the application of internal frontier controls within the Community, but solely controls which are performed as part of the normal control procedures applied in a non-discriminatory fashion throughout the territory of the Community.
4. Application of the measures pursuant to paragraphs 1 and 2 may in no case result in transfers from one Member State to another being subject to more restrictive conditions than those imposed for exports of the same product to non-Member countries.
5. Documents and records of intra-Community consignments of dual-use items listed in Annex I shall be kept for at least three years from the end of the year in which a transaction took place and shall be produced to the competent authorities of the Member State from which these items were transferred on request.

6. The relevant commercial documents relating to intra-Community transfers of dual-use items listed in Annex I shall indicate clearly that those items are subject to controls if exported from the Community. Relevant commercial documents are, in particular, the sales contract, the order confirmation, the invoice or the dispatch note.

Article 22

Regulation (EC) No 3381/94 is repealed.

However, for export authorisation applications made before the date of entry into force of this Regulation, the relevant provisions of Regulation (EC) No 3381/94 shall continue to apply.

Article 23

This Regulation shall enter into force 45²⁷ days after the date of its publication in the Official Journal.

²⁷ Some delegations wondered whether 45 days would be sufficient for national administrations to take the necessary measures for compliance with the new regulation. It was agreed that this matter would be reconsidered when the draft regulation was ripe for adoption.

Annex I

(Text of Commission proposal for Annex I to be replaced by new consolidated version contained in Decision 1999/193 CFSP of 9 March 1999).

COMMUNITY GENERAL EXPORT AUTHORIZATION N° EU001

Issuing authority: European Community

Part 1) This export authorisation covers the following products:

All dual-use items specified in any entry in Annex I of the present Regulation except those listed in Part 2 below.

Part 2)

*all items specified in Annex IV

*0A001, 0A002, 0B003, 0B005, 0C001, 0C003, 0C004²⁹, 0C005,

*(other missile or nuclear related items)

Part 3) This export authorisation is valid for exports to the following destinations

Australia
Canada
Czech Republic
Hungary
Japan
New Zealand
Norway
Poland
Switzerland
United States of America

Note: Part 2 and 3 shall be amended only in conformity with the relevant obligations and commitments that each Member State has accepted as a member of the international non-proliferation regimes and export control arrangements, and in conformity with the public security interests of each Member State as reflected in its responsibility for deciding on applications for authorisations to export dual-use items under Article 6.2 of this Regulation.

²⁸ NB: In depth discussions concerning the contents of Annexes II and IV are being held by ad hoc Working Party (see "Outcome of proceedings" above)

²⁹ Only when for use in a nuclear reactor

Conditions and requirements for use of this authorisation³⁰

- (1) This general authorisation may not be used if the exporter is aware or has been informed by the competent authorities of the Member State in which he is established that the items in question are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons.
- [(2) This general authorisation may not be used if the exporter [is aware or]³¹ has been informed by the competent authorities of the Member State in which he is established that the items in question are or may be intended for a military end-use as defined in article 4, paragraph 2 of this Regulation in a country subject to a UN, EU or OSCE arms embargo.
- (3) This general authorisation may not be used when the relevant items are shipped to a free port or a customs warehouse.]³²
- (4) The registration and reporting requirements attached to the use of this Authorisation are defined by Member States. These requirements must be identical to those defined for the use of national General Authorisations if the Member State provides for such authorisations.

³⁰ D/UK placed a reservation on the prohibition to export certain items to certain destinations as specified in Part 3 of this Annex under a general authorisation.

³¹ UK expressed a reservation on the use of the words "is aware or"

³² NL requested the deletion of conditions 2 and 3. UK/D opposed such deletion.



*ANNEX IIIa - MODEL FORM*³³

³³ UK will submit proposals for improvement of the model form.

1	1 Exporter	2 Identification number	3. Expiry date	
L I C E N C E		4 Contact point details		
	5 Consignee	6. Address of the issuing authority		
	7 Agent/Representative (if different to -----)	8. Country of origin (if applicable)		Cod
		9 Country of consignment (if applicable)		Code
	10. End user (if different to consignee) N°	11. Member State of current or future location of the goods		Code
		12. Member State of intended entry into the customs export procedure		Code
		13. Country of destination		Code
I	14. Description of the goods	15. Commodity code	16. Control list n°	
		17. Currency and Value	18. Quantity of the goods	
14. Description of the goods		15. Commodity code	16. Control list n°	
		17. Currency and Value	18. Quantity of the goods	
19. End use		20. Contract date	21. Customs exp.proc	22 C.S.
23. Additional information				
<p style="text-align: center;">Available for preprinted information At discretion of Member States</p>				
		26. For completion by issuing authority Signature Function Place Date		
		Stamp		

Note : In part 1 of column 28, write the quantity still available and in part 2 of column 28, write the quantity deducted on this occasion.			
27. Net quantity/value (Net mass/other unit with indication of unit)		30. Customs document (Type and number) or extract (Nr) and date of deduction	31. Member state, name and signature, stamp of deduction
28. In numbers	29. In words for quantity/value deducted		
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			

Annex IIIb

Common elements for publication of general authorisations

- (1) Title of general export authorisation
- (2) Authority issuing the authorisation
- (3) EC validity. The following text shall be used:
“This is a general authorisation under the terms of Article 6.2 of EC Regulation N°XXXX (99). This authorisation, in accordance with article 6.2 of that Regulation, is valid in all Member States of the European Community”.
- (4) Product scope: The following introductory text shall be used:
“This export authorisation covers the following products”
- (5) Country coverage: The following introductory text shall be used:
“This export authorisation is valid for exports to the following destinations”
- (6) Conditions and requirements

Annex IV

The entries do not always cover the complete description of the item and the related notes in Annex I. Only Annex I provides for the complete description of the items.

Part I

(possibility of National General Authorisation for intra-Community trade)

Items of stealth technology

- 1C001** Materials specially designed for use as absorbers of electromagnetic waves, or intrinsically conductive polymers.
NB : see also 1C101
- 1C101** Materials or devices for reduced observables such as radar reflectivity, ultraviolet/infrared signatures and acoustic signatures; other than those specified in 1C001, usable in 'missiles' and their subsystems;
- 1D103** "Software" specially designed for analysis of reduced observables such as radar reflectivity, ultraviolet/infrared signatures and acoustic signatures;
- 1E101** 'Technology' according to the GTN for the 'use' of goods specified in 1C101 or 1D103.
- 1E102** 'Technology' according to the GTN for the 'development' of 'software' specified in 1D103.
- 6B008** Pulse radar cross-section measurement systems having transmit pulse widths of 100 ns or less and specially designed components therefor;
NB: see also 6B108
- 6B108** Systems specially designed for radar cross section measurement usable for "missiles" and their subsystems;

Items of the Community strategic control

- 1C239** High explosives, other than those specified in the military goods controls, or substances or mixtures containing more than 2 % thereof, with a crystal density greater than 1,8 gm per cm³ and having a detonation velocity greater than 8000 m/s.
- 3A002.g.2.** Atomic frequency standards having any of the following:
2. Being "space qualified".
- 3A229** Firing sets and equivalent high-current pulse generators (for controlled detonators), as follows...
NB : see also military goods controls
- 3A232** Detonators and multipoint initiation systems, as follows...
NB : see also military goods controls

- 6A001** Acoustics, limited to the following:
- 6A001.a.1.b.
 - 6A001.a.2.a.1.
 - 6A001.a.2.a.2.
 - 6A001.a.2.a.7.
 - 6A001.a.2.b.
 - 6A001.a.2.d.
 - 6A001.a.2.e.
 - 6A001.a.2.f.
- 6D003.a.** 'Software' specially designed for acoustic beam forming for the 'real time processing' of acoustic data for passive reception using towed hydrophone arrays;
- 8A002.o.3.** Noise reduction systems designed for use on vessels of 1000 tonnes displacement or more, as follows:
- a) systems that attenuate underwater noise at frequencies below 500 Hz and consist of compound acoustic mounts for the acoustic isolation of diesel engines, diesel generator sets, gas turbines, gas turbine generator sets, propulsion motors or propulsion reduction gears, specially designed for sound or vibration isolation, having an intermediate mass exceeding 30 % of the equipment to be mounted;
 - b) active noise reduction or cancellation systems, or magnetic bearings, specially designed for power transmission systems, and incorporating electronic control systems capable of actively reducing equipment vibration by the generation of anti-noise or anti-vibration signals directly to the source;
- 8A002.p.** Pumpjet propulsion systems having a power output exceeding 2,5 MW using divergent nozzle and flow conditioning vane techniques to improve propulsive efficiency or reduce propulsion-generated underwater-radiated noise;
- 8D002** Specific 'software' specially designed or modified for the 'development', 'production', repair, overhaul or refurbishing (re-machining) of propellers specially designed for underwater noise reduction.
- 8E002.a.** 'technology' for the overhaul or refurbishing of equipment specified in 8A002.o.3. or 8A002.p.

Items of the Community strategic control – Cryptography – category 5-part 2

No cryptography items on annex IV

[Products for cryptanalysis:

- systems, equipment and components designed or modified to operate cryptanalysis functions (5A002.a.2.) and software presenting the characteristics or simulating the functions of this equipment (included in 5D002.c.1.);
- products or technology used for the "development", the "production" or the "use" of the above mentioned equipment or software.

Products for evaluation:

- equipment for measurement in entry 5B002.b. specially designed to evaluate and validate the functions of security of information in entries 5A002 or 5D002, and software in entry 5D002.c.1. presenting the characteristics or executing the functions of this equipment;
- products or technology used for the "development", the "production" or the "use" of the above mentioned equipment or software.

Products for development:

- products (equipment or software) specially designed or technology used for the "development" of equipment,

functions or software of cryptography.]

Items of the MTCR technology

- 7A117** "Guidance sets", usable in "missiles" capable of achieving system accuracy of 3.33% or less of the range (e.g., a "CEP" of 10 km or less at a range of 300 km).
- 7B001** Test, calibration or alignment equipment specially designed for equipment specified in 7A117.
Note: 7B001 does not control test, calibration or alignment equipment for Maintenance Level I or Maintenance Level II.
- 7B003** Equipment specially designed for the "production" of equipment specified in 7A117.
Note: 7B003 includes:
- a. Gyro tuning test stations;
 - b. Gyro dynamic balance stations;
 - c. Gyro run-in/motor test stations;
 - d. Gyro evacuation and fill stations;
 - e. Centrifuge fixtures for gyro bearings;
 - f. Accelerometer axis align stations.
- 7B103** Specially designed "production facilities" for equipment specified in 7A117.
- 7D101** "Software" specially designed for the "use" of equipment specified in 7B003 or 7B103.
- 7D103** "Software" specially designed for modelling or simulation of the "guidance sets" specified in 7A117 or for their design integrations with the space launch vehicles specified in 9A004 or sounding rockets specified in 9A104.
- 7E001** "Technology" according to the General Technology Note for the "development" of equipment or "software" specified in 7A117, 7B003, 7B103 or 7D101.
- 7E002** "Technology" according to the General Technology Note for the "production" of equipment specified in 7A117, 7B003, 7B103 and 7D101.
- 7E101** "Technology" according to the General Technology Note for the "use" of equipment specified in 7A117, 7B003, 7B103 and 7D101.
- 9A004** Space launch vehicles [capable of delivering at least a 500 kg payload to a range of at least 300 km]^{34 35}.
N.B.: SEE ALSO 9A104.
Note 1: 9A004 does not control payloads.
- 9A005** Liquid rocket propulsion systems containing any of the systems or components specified in 9A006.
N.B.: SEE ALSO 9A105 and 9A119.
- 9A007.a.** Solid rocket propulsion systems with any of the following:
N.B.: SEE ALSO 9A119.
a. Total impulse capacity exceeding 1.1 MNs;

³⁴ In Annex I, both space launch vehicles and "spacecraft" are controlled. Annex IV does not control "spacecraft" (see definition: "active and passive satellites and space probes").

³⁵ This specification applies also to 9A005, 9A007.a. or 9A008.d.

- 9A008.d.** Components, as follows, specially designed for solid rocket propulsion systems:
N.B.: SEE ALSO 9A108.c.
d. Movable nozzle or secondary fluid injection thrust vector control systems capable of any of the following:
1. Omni-axial movement exceeding $\pm 5^\circ$;
 2. Angular vector rotations of $20^\circ/\text{s}$ or more; or
 3. Angular vector accelerations of $40^\circ/\text{s}^2$ or more.
- 9A104** Sounding rockets, capable of [delivering at least a 500 kg payload to] a range of at least 300 km³⁶.
N.B.: SEE ALSO 9A004.
- 9A105.a.** Liquid propellant rocket engines, as follows:
N.B.: SEE ALSO 9A119.
a. Liquid propellant rocket engines usable in "missiles", other than those specified in 9A005, having a total impulse capacity of 1.1 MNs or greater;
- 9A106.c.** Systems or components, other than those specified in 9A006, usable in "missiles", as follows, specially designed for liquid rocket propulsion systems:
c. Thrust vector control sub-systems;
Technical Note:
Examples of methods of achieving thrust vector control specified in 9A106.c. are:
1. Flexible nozzle;
 2. Fluid or secondary gas injection;
 3. Movable engine or nozzle;
 4. Deflection of exhaust gas stream (jet vanes or probes); or
 5. Thrust tabs.
- 9A108.c.** Components, other than those specified in 9A008, usable in "missiles", as follows, specially designed for solid rocket propulsion systems:
c. Thrust vector control sub-systems.
- 9A116** Reentry vehicles, usable in "missiles", and equipment designed or modified therefor, as follows:
- a. Reentry vehicles;
 - b. Heat shields and components therefor fabricated of ceramic or ablative materials;
 - c. Heat sinks and components therefor fabricated of light-weight, high heat capacity materials;
 - d. Electronic equipment specially designed for reentry vehicles.
- 9A119** Individual rocket stages, usable in complete rocket systems or unmanned air vehicles, capable of a range of 300 km, other than those specified in 9A005 or 9A007.a.
- 9B115** Specially designed "production equipment" for the systems, sub-systems and components specified in 9A005, 9A007.a., 9A008.d., 9A104, 9A105.a., 9A106.c., 9A108.c., 9A116 or 9A119.
- 9B116** Specially designed "production facilities" for the space launch vehicles specified in 9A004³⁷, or systems, sub-systems, and components specified in 9A005, 9A007.a., 9A008.d., 9A104, 9A105.a., 9A106.c., 9A108.c., 9A116 or 9A119.

³⁶ This specification applies also to 9A105.a., 9A106.c. or 9A108.c.

³⁷ Limited to space launch vehicles and "spacecraft", other than satellites. The question arises on whether "spacecraft" (definition : "active and passive satellites and space probes") as a whole should be excluded from the coverage of Annex IV.

- 9D001** "Software" specially designed or modified for the "development" of equipment or "technology" specified in 9A005, 9A007.a., 9A008.d., 9A108.c., 9A119, 9B115 or 9B116.
- 9D101** "Software" specially designed for the "use" of goods specified in 9B116.
- 9D103** "Software" specially designed for modeling, simulation or design integration of the space launch vehicles specified in 9A004³⁸ or sounding rockets specified in 9A104, or the subsystems specified in 9A007.a., 9A108.c. or 9A119.
- 9E001** "Technology" according to the General Technology Note for the "development" of equipment or "software" specified in 9A004³⁹, 9A005, 9A007.a., 9A008.d., 9B115, 9B116 or 9D101.
- 9E002** "Technology" according to the General Technology Note for the "production" of equipment specified in : 9A004⁴⁰, 9A005, 9A007.a., 9A008.d., 9B115 or 9B116.
Note: For "technology" for the repair of controlled structures, laminates or materials, see 1E002.f.
- 9E101** "Technology" according to the General Technology Note for the "development" or "production" of goods specified in 9A104, 9A105.a., 9A106.c., 9A108.c., 9A116 or 9A119.
- 9E102** "Technology" according to the General Technology Note for the "use" of space launch vehicles specified in 9A004⁴¹, 9A005, 9A007.a., 9A008.d., 9A104, 9A105.a., 9A106.c., 9A108.c., 9A116, 9A119, 9B115, 9B116 or 9D101.

- Exemptions:

Annex IV does not control the following items of the MTCR technology:

- 1) that are transferred on the basis of orders placed by the European Space Agency (ESA) or that are transferred by ESA to accomplish its official tasks;
- 2) that are transferred on the basis of orders placed by a Member State's national space organisation or that are transferred by it to accomplish its official tasks;
- 3) that are transferred on the basis of orders placed in connection with a Community development and production programme signed by two or more European governments;
- 4) that are transferred to a State-controlled missile launching site in the customs territory of the Community.

Part II

(no National General Authorisation for intra-Community trade)

Items of the CWC (Chemical Weapons Convention)

1C351.d.4. ricin

1C351.d.5. saxitoxin

³⁸ See footnote 1.

³⁹ See footnote 1.

⁴⁰ See footnote 1.

⁴¹ See footnote 1.

Items of the NSG technology

All Category 0 of Annex I

Exemption:

For 0C003 and 0C004, only if for use in a "nuclear reactor" (see also within 0A001.a.).

- 1B226** Electromagnetic isotope separators designed for, or equipped with, single or multiple ion sources capable of providing a total ion beam current of 50 mA or greater.
Note: 1B226 includes separators:
a. Capable of enriching stable isotopes;
b. With the ion sources and collectors both in the magnetic field and those configurations in which they are external to the field.
- 1C012** Materials for nuclear heat sources, as follows:
a. Plutonium in any form with a plutonium isotopic assay of plutonium-238 of more than 50% by weight;
Note: 1C012.a. does not control:
a. Shipments with a plutonium content of 1 g or less;
b. Shipments of 3 "effective grammes" or less when contained in a sensing component in instruments.
b. "Previously separated" neptunium-237 in any form.
Note: 1C012.b. does not control shipments with a neptunium-237 content of 1 g or less.
- 1B231** Tritium facilities or plants, and equipment therefor, as follows:
a. Facilities or plants for the production, recovery, extraction, concentration, or handling of tritium;
b. Equipment for tritium facilities or plants, as follows:
1. Hydrogen or helium refrigeration units capable of cooling to 23 K (-250°C) or less, with heat removal capacity greater than 150 W;
2. Hydrogen isotope storage or purification systems using metal hydrides as the storage or purification medium.
- 1B233** Lithium isotope separation facilities or plants, and equipment therefor, as follows:
a. Facilities or plants for the separation of lithium isotopes;
b. Equipment for the separation of lithium isotopes, as follows:
1. Packed liquid-liquid exchange columns specially designed for lithium amalgams;
2. Mercury or lithium amalgam pumps;
3. Lithium amalgam electrolysis cells;
4. Evaporators for concentrated lithium hydroxide solution.

- 1C233** Lithium enriched in the lithium-6 (^6Li) isotope to greater than its natural isotopic abundance, and products or devices containing enriched lithium, as follows: elemental lithium, alloys, compounds, mixtures containing lithium, manufactures thereof, waste or scrap of any of the foregoing.
Note: 1C233 does not control thermoluminescent dosimeters.
Technical Note:
The natural isotopic abundance of lithium-6 is approximately 6.5 weight per cent (7.5 atom per cent).
- 1C235** Tritium, tritium compounds, mixtures containing tritium in which the ratio of tritium to hydrogen atoms exceeds 1 part in 1000, and products or devices containing any of the foregoing.
Note: 1C235 does not control a product or device containing less than $1.48 \times 10^3 \text{ GBq}$ (40 Ci) of tritium.
- 3A231** Neutron generator systems, including tubes, having both of the following characteristics:
a. Designed for operation without an external vacuum system; and
b. Utilizing electrostatic acceleration to induce a tritium-deuterium nuclear reaction.
-

Draft statements to the minutes upon adoption of the Regulation

1. Statement re Article 2(b)⁴²

Transfer of technology via the telephone involves reading out the content of technological documents or describing technology in any other way to achieve the same result as via the export or electronic transmission of documents.

2. Statement re Article 4.2

With respect to the definition of the term "military end-use", reference is made in Article 4, paragraph 2 to the respective national military goods list of the Member State. If a Member State does not publish a national military goods list, the term "military end-use" shall be interpreted on the basis of that Member State's national legislation taking into account the Wassenaar munitions list.

The Member States agree that, as soon as the Member States have reached agreement on a Common List of military equipment covered by the EU Code of Conduct on Arms exports, consideration should be given to whether or not there should be any reference to that List in this Regulation.

3. Statement re Article 6, paragraph 2

The Council and the Commission agree that discussions should continue in the Coordination Group with a view to determining to what extent minimal common norms for the use of end-use statements should be introduced at Community level.

4. Statement re Article 6, paragraph 2 and Article 8⁴³

Agencies and branches are legally and economically an integral part of the parent company. The Council and the Commission agree that an agency or branch of an exporter who is established in more than one Member State can only apply for an export authorization in another Member State than the one where its headquarters office is located if it is effectively involved in the transaction to be made. This is the case in particular if the agencies or branches have autonomous decision-making powers on the contract underlying the export transaction, if they themselves have negotiated the contract and have an independent accounting system, and if they are able to discharge themselves of their obligations concerning export control regulations.

5. Statement with regard to the procedure for the amendment of Annexes I, II and IV⁴⁴

⁴² UK maintained a reservation on this proposed statement.

⁴³ UK referred to its proposed alternative text contained in DS 52/99. It was agreed that this text should be discussed at the 13 December meeting.

Given the responsibility of each Member State to uphold its own obligations and commitments to the various international non-proliferation and export control treaties, conventions, regimes and arrangements and given its responsibility for deciding on applications for authorizations to export dual-use items, the Council agrees that any amendment to Annex I of the Regulation, or to Part 2 and 3 of the Community General Authorization set out in Annex II, or to Annex IV of the Regulation, must conform fully with the above-mentioned obligations and commitments, as well as with the public security interests of each Member State as reflected in its responsibility for deciding on applications for authorizations to export or transfer dual-use items.

As far as nuclear goods are concerned, the Member States' individual commitments to the NPT shall be taken into account, especially as resulting from Article I for nuclear-weapon States and from Article II for non-nuclear-weapon States.

The Commission, taking note of this declaration by the Council, and in view of the responsibilities of individual Member States described therein, agrees to propose expeditiously amendments to Annex I or the Annex IV of the proposed Regulation, or to Part 2 and 3 of the Community General Authorization set out in Annex II by the removal or additions of items and/or destinations, if and when any Member State raises concerns of public security.

6. Statement re Article 11

The Commission, whilst acknowledging that there is no Community participation in the international non-proliferation regimes and export control arrangements, and whilst abstaining from proposing any such participation, urges Member States to coordinate, in a CFSP context, their positions in these regimes.

[In this context, the Commission states that it accepts the status quo of its representation in the regimes (member of the Australia Group, permanent observer in the Nuclear Suppliers' Group and the Zangger Committee, member of the delegation of the Member State holding the Presidency in the MTCR and Wassenaar Arrangement). The Commission reiterates, however, its request to be able to participate, as a Member of the Presidency delegation, in the meetings of the Wassenaar regime at Group level.]⁴⁵

⁴⁴ GR reiterated its wish to see a reference to Article 296 TEC (either in the present statement or in the Regulation itself).

⁴⁵ F will consult its authorities to establish whether it can agree to the insertion of this paragraph.