



COUNCIL OF
THE EUROPEAN UNION

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NOTE

from: Presidency/Council Secretariat
to: Delegations
Subject: Draft Council Regulation setting up a Community regime for the control of exports of dual-use items and technology (based on proposal tabled using the "recast" technique) (doc. 16989/06)
- consolidated "outcomes of proceedings", reflecting delegations' positions expressed in the context of the Dual Use Working Party, January 2007 to 31 October 2008

1. The Working Party on Dual Use Goods has examined the Commission proposal for a Council Regulation setting up a Community regime for the control of exports of dual-use items and technology (doc. 16989/06, tabled using the "recast" technique) at its meetings held during the period January 2007 to 31 October 2008.
2. To date, the Working Party has agreed on the following changes to the recast proposal, subject to agreement on the whole text (agreed text is indicated in bold in the annexed draft):
 - (i) The term "brokering" should be used rather than the term "intermediation services/intermediary services/services of intermediation/services as intermediaries" (agreed at 2 March 2007 meeting of the Working Party, cf. doc. 7067/07).

- (ii) Articles 2 (b) (iv) and 2 (c) (iii): "provision of brokering services" should be deleted from the definitions of export and exporter under Article 2(b) and Article 2(c) (cf. doc. 6986/08. Consequently, the term "export/exporter of brokering services" has been deleted throughout the text).
- (iii) Article 2(e) (definition of "broker") was agreed at the 26 February 2008 meeting of the DUWP (cf. doc. 6986/08 Annex 1).
- (iv) Article 2(f) (definition of "brokering services") was agreed at the 26 February 2008 meeting of the DUWP, subject to a reserve by Sweden (cf. doc. 6986/08 Annex 1).
- (v) Article 2(h) (definition of "Individual export authorisation") was agreed at 27 November 2007 meeting of the DUWP (cf. doc. 15820/07 Annex 1).
- (vi) Article 2(k) (definition of "national general export authorisation") was agreed at the 31 October 2008 meeting of the DUWP (cf. doc. 15621/08, para. 1(i))
- (vii) Article 3c was agreed at 31 October 2008 meeting of the DUWP.
- (viii) Article 6a was agreed at 26 February 2008 meeting of the DUWP (cf. doc. 6986/08 Annex 1).
- (ix) Article 8 para 2 was agreed at 21 April 2008 meeting of the DUWP (cf. doc. 8670/08 Annex 1).
- (x) Article 9 was agreed at 30 May 2008 meeting of the DUWP (cf. doc. 10179/08 Annex 1).
- (xi) Article 10(1) was agreed at 26 February 2008 meeting of the DUWP (cf. doc. 6986/08 Annex 1).
- (xii) Article 15 was agreed at 30 May 2008 meeting of the DUWP (cf. doc. 10179/08 Annex 1).
- (xiii) Article 16 was agreed at 30 May 2008 meeting of the DUWP (cf. doc. 10179/08 Annex 1).
- (xiv) Article 17(b) was agreed at 26 February 2008 meeting of the DUWP (cf. doc. 6986/08 Annex 1)
- (xv) Article 19 ("the Dual Use Committee") (and consequently references thereto in the recitals and other articles) is deleted (cf. doc. 13753/07, paras 3 and 4 - outcome of proceedings of 12 October 2007 meeting of the Working Party).
- (xvi) Article 20 is deleted (withdrawn by Commission representative, cf. doc. 13753/07 para.15, outcome of proceedings of 12 October 2007 meeting of the Working Party).
- (xvii) Article 22 is deleted (At 3 September 2008 meeting of the Working Party the Commission representative could agree with Member States that this proposed article is superfluous).
- (xviii) Article 23 is deleted (withdrawn by the Commission representative at the 7 July 2008 meeting of the Working Party).

- (xix) The proposed Article 25 concerning procedures for intra-Community transfers of certain dual-use items is replaced by the wording of Article 21 of Regulation 1334/2000 for this article, further to agreement by Member States at DUWP on 3 May 2008 and agreement by the Commission representative at the 3 September 2008 meeting of the DUWP, on condition that a Council/Commission statement be inserted in the Council minutes upon adoption of the new regulation to the effect that Member States agree to consider the list of items for which a licence is required for intra-Community transfers with a view to reducing the number of items contained in the list.
 - (xx) Preambular paragraphs 12, 16, 18 and 19 should be deleted, since the corresponding articles in the recast are deleted, and the proposed preambular paragraphs 5, 14 and 15 are amended (cf. doc. 14038/08 outcome of proceedings of 6 October 2008 meeting).
 - (xxi) The annexes will be numbered in the same way as in the current regulation, and the new standard form for brokering licences agreed at the 21 April 2008 meeting of the will be numbered Annex IIIb (cf. doc. 14038/08 outcome of proceedings of 6 October 2008 meeting)
 - (xxii) The revised title for the draft regulation was agreed at the 6 October 2008 meeting of the Dual Use Working Party.
3. Delegations will find in the Annex hereto a draft Council Regulation amending and updating Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology (based on proposal tabled following the "recast" technique), annotated to reflect delegations' positions expressed in the context of the Dual Use Working Party February 2007 to 31 October 2008. In the interest of legal drafting requirements and consistency, certain paragraphs have been slightly reworded (without changing their meaning). Further adjustments in the interest of legal drafting requirements will be made at the appropriate juncture.

4. Key to markers and type-faces used in the Annex:

It may be noted that the draft regulation in Annex follows the recasting technique by which a new text is adopted that, on the one hand, codifies unchanged provisions and purely textual minor changes and, on the other hand, contains substantive amendments to the original text.

In accordance with the arrangements laid down in the *Interinstitutional agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts*,¹ the draft must be presented in accordance with the special "LegisWrite" recasting software, until it reaches the stage of final review by the Jurists Linguists. This implies that interinstitutionally agreed markers show the similarities and differences with the previous legal act.

The main markers and typefaces are the following:

White text: unchanged texts or drafting changes that should not be discussed.

Grey shaded: substantive modifications of the previous act open for discussion.

Double strikethrough: deletions from the previous act proposed by the Commission.

.... or double underlining : additions.

Substantive modifications suggested or agreed by the Working Party are indicated as follows:

- Deletion:
- added text

Bold: text agreed by the Working Party

¹ OJ C 77, 28.3.2002, p. 1.

DRAFT

COUNCIL REGULATION

setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items [...] ²

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 Commission,

Whereas:

new

(1) Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology³ has been amended substantially, and it should be recast in the interests of clarity.

© 1334/2000 recital 1 (adapted)

(2) Dual-use items (including software and technology) should be subject to effective control when they are exported from the European Community.

© 1334/2000 recital 2

(3) An effective common system of export controls on dual-use items is necessary to ensure that the international commitments and responsibilities of the Member States, especially regarding non-proliferation, and of the European Union, are complied with.

² Title agreed at 6 October 2008 meeting of the DUWP (cf. doc. 10438/08 para.1(ix)) At 31 October 2008 Cion made an alternative suggestion for this agreed title. MSs. preferred to retain the agreed version.

³ OJ L 159, 30.6.2000, p. 1. Regulation as last amended by Regulation (EC) No 1183/2007 (OJ L 278, 22.10.2007, p. 1).

© 1334/2000 recital 3

- (4) 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.

© 1334/2000 recital 4 (adapted)

- (4) ~~The current regime of export controls on dual-use items established by Regulation (EC) No 3381/94, and Decision 94/942/CFSP, needs to be further harmonised in order to continue to guarantee the effective application of controls.~~

© 1334/2000 recital 6

new
Council

- (5) The responsibility for deciding on applications for ~~individual, global or general national~~ export authorisations ~~or for authorisations for brokering services~~ [...]⁴ lies with national authorities. National provisions and decisions affecting exports of dual-use items must be taken in the framework of the common commercial policy, and in particular Council Regulation (EEC) N° 2603/69 of 20 December 1969 establishing common rules for exports⁵.

© 1334/2000 recital 7 (adapted)

new

- (6) Decisions to update the common lists of dual-use items subject to export controls must be in full conformity with the obligations and commitments that ~~each Member State has~~ States have accepted as ~~a member~~ members of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties.⁶

⁴ Phrase deleted at the suggestion of Cion at 6 October 2008 meeting of DUWP (cf. doc. 14038/08, para. 1(x))

⁵ OJ L 324, 27.12.1969, p. 25. Regulation as last amended by Regulation (EEC) N° 3918/91 (OJ L 372, 31.12.1991, p. 31).

⁶ Subject to revision depending on final wording of Article 11

© 1334/2000 recital 5 (adapted)
new

- (7) Common lists of dual-use items, destinations and guidelines are essential elements for an effective export control regimes [...]⁷
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© 1334/2000 recital 8
Council

- (8) Transmission of software and technology by means of electronic media, fax or telephone to destinations outside the Community should also be controlled.
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© 1334/2000 recital 9

- (9) Particular attention needs to be paid to issues of re-export and end-use.
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© 1334/2000 recital 10

- (10) On 22 September 1998 representatives of the Member States and the European Commission signed Protocols additional to the respective safeguards agreements between the Member States, the European Atomic Energy Community and the International Atomic Energy Agency, which, among other measures, oblige the Member States to provide information on transfers of specified equipment and non-nuclear material.
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© 1334/2000 recital 11

- (11) The Community has adopted a body of customs rules, contained in Regulation (EC) No. 2913/2002 of 12 October 1992 establishing the Community Customs Code⁸ and Commission Regulation (EEC) No 2454/93⁹ implementing Regulation (EEC) No 2913/92 which lay down, among other things, provisions relating to the export and re-export of goods.
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⁷ Deletion of reference to comitology as agreed at 12 October 2007 meeting of DUWP (doc. 13753/07). At that meeting the CLS observed that recital 7 should be modified in view of Article 202, third indent, of the TEC, which states that "the Council may reserve the right, in specific cases, to exercise directly implementing powers itself." In such case, it should provide detailed reasons for conserving such powers.

⁸ OJ L 302, 19.10.1991, p. 1. Regulation as last amended by Regulation (EC) No 955/1999 of the European Parliament and of the Council (OJ L 119, 7.5.1999, p.1). At the 3 September 2008 meeting of the DUWP the CLS drew attention to the entry into force on 24 June 2008 of the "Modernised Customs Code" (Regulation (EC) No. 450/2008 of the European Parliament and the Council of 23 April 2008), by which Regulation (EC) No. 2913/92 is repealed.

⁹ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1662/1999 (OJ L 197, 29.7.1999, p. 25).

Nothing in this Regulation constrains any powers under and pursuant to the Community Customs Code and its implementing provisions.

© 1334/2000 recital 12
new

- (12) Pursuant to and within the limits of Article 30 of the Treaty and pending a greater degree of harmonisation, Member States will retain the right to carry out controls on transfers of certain dual-use items within the European Community in order to safeguard public policy or public security. [...]¹⁰ Where these controls are linked to the effectiveness of controls on exports from the Community, they will be periodically reviewed by the Council.
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© 1334/2000 recital 13

- (13) In order to ensure that this Regulation is properly applied, each Member State should take measures giving the competent authorities appropriate powers.
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new
Council

- [(14) The United Nations Security Council Resolution 1540, adopted on 28 April 2004, [calls in particular for adequate prevention of illicit export, re-export, transit, transhipment and brokering of dual-use items]¹¹. [Accordingly, a possibility for Member States' authorities to prohibit on a case-by-case basis the transit of non-Community dual use items should be established, where they have reasonable grounds for suspecting from intelligence or other sources that the items are or may be intended in their entirety or in part [...] for proliferation of weapons of mass destruction or of their means of delivery. [...]¹² Controls should also be introduced on the provision of **brokering** services when the **broker** has been informed by competent national authorities or is aware that it might lead to production or delivery of illegal weapons of mass destruction in a third country.]
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¹⁰ Deleted at 6 October 2008 meeting of DUWP further to Cion statement (cf. doc. 10438/08 para. 1(x)).

¹¹ At 31 October 2008 meeting NL/DE noted that UNSCR 1540 does not refer to "dual use items" and suggested this prebular paragraph should reproduce UNSCR 1540 wording.

¹² Sentence agreed at 6 October 2008 meeting of DUWP (cf. doc. 10438/08 - outcome of proceedings)

(14)(a) The Heads of State or Government of the EU adopted in June 2003 an Action Plan on Non-Proliferation of Weapons of Mass Destruction. This Action Plan was complemented by the EU Strategy against proliferation of Weapons of Mass Destruction adopted by the European Council in December 2003. According to Chapter III of the EU Strategy against proliferation of WMD, the European Union must make use of all its instruments to prevent, deter, halt, and if possible eliminate proliferation programmes that cause concern at global level. Sub-paragraph 30.A) 4) of that chapter specifically refers to strengthening export control policies and practices.

(15) It is desirable to achieve a uniform and consistent application of controls throughout the EU in order to avoid undermining EU and international security and unfair competition among EU exporters. With this objective, it is decided, in [...] accordance with the recommendations of the Thessaloniki Action Plan adopted by Heads of State or Government in June 2003 and [...] with the calls of the [...] EU strategy against proliferation of weapons of mass destruction adopted on 12 December 2003 :

- to enlarge the circumstances when the Member States can enter into consultation with other Member States prior to granting an export authorisation which could, for example, threaten another Member State's essential security interests
- [- to ensure greater convergence of the conditions of implementation of the national controls on dual-use items not listed by the Regulation]¹³
- to complement the definition of intangible transfers of technology to include making available controlled technology to persons located outside the EU and including technical assistance services provided via electronic means; and to adjust, by amendments to Article 16, the record keeping requirements for intangible transfers of technology to the actual possibilities of exporters
- [- to harmonise the conditions of use of the different types of authorisations that can be granted under the Regulation]¹⁴

¹³ At 6 October 2008 meeting of DUWP Cion stated that this phrase could be deleted

¹⁴ At 6 October 2008 meeting of DUWP Cion stated that this phrase could be deleted

- to further align the modalities of exchange of sensitive information among Member States with some of the existing practices of the international export control regimes, in particular by introducing in the Regulation the concept of denials in effect or of valid denials, and to provide for the possibility of establishing a secure electronic system for sharing information among the Member States.]¹⁵

(16) [...] ¹⁶

© 1334/2000 recital 14 (adapted)
new

(17) Each Member State should determine the effective, proportionate and dissuasive penalties applicable in the event of breach of the provisions of this Regulation.

new

(18) [...] ¹⁷

(19) [...]

(20) [...] ¹⁸

© 1334/2000 recital 15 (adapted)

~~The European Parliament expressed its views in its resolution of 13 April 1999¹⁹~~

© 1334/2000 recital 16 (adapted)

~~In view of the foregoing, Regulation (EC) No 3381/94 should be repealed.~~

¹⁵ At the 21 April 2008 meeting of the DUWP, the CLS observed that the implications of the CLS Opinion set out in doc. 7615/08 should be taken into account during finalisation of these recitals by the DUWP. At the 7 July 2008 DUWP Pcy/DE/ SE/UK agreed on the need to amend recital (15) in light of the CLS opinion. Pcy proposes the insertion of a new article 14(a) and modified wording for article 15 as shown here (30 July 2008). At 6 October 2008 meeting, Pcy noted that the indents would need to be expressed in full sentences in conformity with legal drafting practice.

¹⁶ Recital 16 deleted further to Cion statement at 6 October 2008 meeting of DUWP (cf. doc. 10438/08 para. 1(x))

¹⁷ Recital 18 deleted further to Cion statement at 6 October 2008 meeting of DUWP (cf. doc. 10438/08 para. 1(x))

¹⁸ Recital 16 deleted further to Cion statement at 6 October 2008 meeting of DUWP (cf. doc. 10438/08 para. 1(x)) Recitals 18 and 19 deleted further to Cion statement at 6 October 2008 meeting of DUWP (cf. doc. 10438/08 para. 1(x))

¹⁹ OJ C 219, 30.7.1999, p. 34.

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT AND DEFINITIONS

Article 1

This Regulation sets up a Community ~~system~~ regime²⁰ [...] for the control of of exports, transfer, brokering and [...] transit of dual-use items ²¹.

Article 2

For the purposes of this Regulation:

- (a) «dual-use items» shall mean items, 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;

²⁰ Responding to queries by UK/NL, the Cion explained that the word “system” had been replaced by “regime” for consistency with the title of the regulation (27 November 2007 meeting of the DUWP).

²¹ Article 1 adjusted further to agreement on title at 6 October 2008 meeting of DUWP (doc. 10438/08 para. 1(ix))

(b) «export» shall mean:

- (i) an export procedure within the meaning of Article 161 of Regulation (EC) No 2913/1992 (the Community Customs Code);
- (ii) are-export within the meaning of Article 182 of that Code~~as~~ [but not including items in transit,]²² and
- (iii) **transmission of software or technology** **[...]** **by electronic media, including by fax, telephone, electronic mail or any other electronic means to a destination outside the European Community; it includes making available in an electronic form such software and technology to legal and natural persons and partnerships outside the European Community.** **Export also applies to oral transmission of technology when the technology is described over the telephone.]**²³

[(iv) **[...]** ²⁴

(c) «exporter» shall mean any natural or legal person **or partnership**²⁵

- (i) on whose behalf an export declaration is made, that is to say 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 European Community. If no export contract has been concluded or if the holder of the contract does not act on its own behalf, the exporter shall mean the person who has the power for determining the sending of the item out of the customs territory of the European Community ~~shall be decisive~~;

²² Pcy compromise suggestion (30 July 2008)

²³ Text agreed at 6 October 2008 meeting of DUWP doc. 10438/08 para. 1(i)

²⁴ “provision of brokering services” deleted from definition of export under Article 2(b) (since brokering transactions would not be treated in the same way as other exports) (DS 15/2008 agreed at 26 February 2008 meeting of DUWP).

²⁵ Delegations agreed to this wording as proposed in the recast (27 November 2007 meeting of the DUWP).

(ii) ~~«exporter» shall also mean any natural or legal person~~ who decides to transmit [or make available]²⁶ software or technology ~~.....~~²⁷ by any electronic ~~media, fax or telephone~~²⁸ means to a destination outside the European Community;

new

[(iii) ~~.....~~]²⁹

© 1334/2000
Council

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 procedure;

Council
suggested by Presidency (SI) in DS 15/2008
and agreed at 26 February 2008

(e) «broker» shall mean any natural or legal person or partnership resident or established in a Member State of the European Community that carries out activities defined under Article 2 (f) from the European Community into the territory of a third country;

²⁶ NL requested deletion of “or make available”, LUX felt this was not necessary, IRL/CY wondered how these controls would be enforced; DE/IT/UK noted that the issue of “public domain” had frequently been discussed, a decision would need to be made as to how to close loopholes in this connection. Pcy concluded that the issue should be discussed further (27 November 2007 meeting of the DUWP).

²⁷ Agreement to delete "or the provision of technical assistance" cf. doc. 8930/07 para. 4 - outcome of proceedings of 26 April 2007 meeting of DUWP)

²⁸ AT referred to its DS 49/2008 noting that deletion of reference to fax and telephone were inconsistent with Article 2(b)(iii) (DUWP 7 July 2008)

²⁹ “brokering services” deleted from definition of exporter under Article 2(c) (since brokers will not be treated in the same way as other exporters) (DS 15/2008 agreed at 26 February 2008 meeting of DUWP)

(f) «brokering services» shall mean:³⁰

- the negotiation or arrangement of transactions for the purchase, sale or supply of dual use items listed in Annex I from a third country to any other third country;
- the selling, buying of items listed in Annex I that are located in third countries for their transfer to another third country;

For the purposes of this Regulation the sole provision of ancillary services is excluded from this definition. Ancillary services are transportation, financial services, insurance or re – insurance or general advertising or promotion.

(g) "Transit" shall mean a transport of non-Community³¹ dual-use items entering and passing through the customs territory of the European Community with a destination outside the European Community³²

(h) "Individual export authorisation" shall mean an authorisation granted to one specific exporter for one end user or consignee in a third country and covering one or more dual-use items³³

(i) "Community General Export Authorisation" shall mean an export authorisation for exports to certain countries of destination available to all exporters who respect its conditions of use as listed in Article 6(1) and Annex II.³⁴

³⁰ AT referred to its comments in DS 49/2008, in particular noting that as this definition is different from the one in Common Position 2003/468 on the control of arms brokering this could lead to incoherent interpretations in both cases. SE maintained its reservation of this definition; NL stated the definitions in 2(e) and 2(f) are not consistent with national brokering controls (DUWP 7 July 2008)

³¹ Pcy compromise suggestion (30 July 2008)

³² Agreed at 3 September 2008 meeting of the DUWP (subject to a study reserve by Austria on all transit provisions)

³³ Modified definition agreed at 27 November 2007 meeting of DUWP (addition of words "or consignee" and deletion of words "and technologies")

³⁴ Delegations could agree to this definition, subject to a reserve by NL, pending agreement on new CGEAs (cf. doc. 12964/07 para. 2 - outcome of proceedings of 14 September 2007 meeting of DUWP) At the 7 July 2008 meeting of the DUWP, NL confirmed its reservation and its wish to consider this sub-article as a package together with agreement on the new CGEAs; however it was willing to agree to this definition.

(j) "Global export authorisation" shall mean an authorisation granted to one specific exporter in respect of a type or category of dual-use item which may be valid for exports to one or more specified end users and/or in one or more specified third countries.³⁵

(k) "National general export authorisation" shall mean ... an export authorisation granted in accordance with Article 6(2) and defined by national legislation ²in conformity with Article 6 and Annex IIIc of this regulation .³⁶

[(l) ...]³⁷

(m) "customs territory of the European Union" shall mean the territory within the meaning of Article 3 of Regulation (EC) No. 2913/92 (the Community Customs Code)

(n) "non-Community dual use items" shall mean items that have the status of non-Community goods within the meaning of Article 4.8 of Regulation (EC) No. 2913/92 (the Community Customs Code)³⁸

CE 1334/2000

CHAPTER II

SCOPE

Article 3a

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

³⁵ Agreed, subject to reservation by DK (27 November 2007 meeting of the DUWP) At the 7 July 2008 DUWP DK lifted its reservation, but noted that this definition was not consistent with Article 6(5), currently unshaded. Cion should suggest adjusted wording for Article 6(5).

³⁶ At 31 October 2008 meeting of DUWP, delegations agreed to this wording suggested by Cion in DS 61/2008 (NB wording has been adjusted to definition format Council Secretariat).

³⁷ At 3 September 2008 meeting of DUWP Cion agreed to retain the wording of Article 21 of Regulation 1334/2000 for Article 25 of the recast. The definition of "supplier" proposed in Article 2(l) of the recast is therefore superfluous, and is deleted.

³⁸ Pcy compromise suggestion (30 July 2008), agreed at 3 September 2008 meeting of DUWP (subject to AT study reserve on transit provisions)

2. Pursuant to 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.
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Council
new agreed at 26 February 2008
DUWP by Cion + MSs (subject to a
reserve by Sweden on Article 3b(2))

Article 3b (numbering inserted by Secretariat for clarity)

- 1. An authorisation shall be required for brokering services of dual-use items listed in Annex I if the broker has been informed by the competent authorities of the Member State in which he is resident or established that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in Article 4(1). If a broker is aware that the dual-use items listed in Annex I for which he proposes brokering services are intended, in their entirety or in part, for any of the uses referred to in Article 4(1), he must notify the competent authorities which will decide whether or not it is expedient to make such brokering services subject to authorisation.**
- [2. A Member State may extend the application of paragraph 1 to non-listed dual-use items for uses referred to in Article 4(1) and to dual-use items for military end uses and destinations referred to in Article 4(2).]**
- 3. A Member State and may adopt or maintain national legislation imposing an authorisation requirement on the brokering of dual-use items, if the broker has grounds for suspecting that these items are or may be intended for any of the uses referred to in Article 4.1.**
- 4. The provisions of Article 5(2), (3) and (4) shall apply to the national measures referred to in paragraphs 2 and 3.]³⁹**

³⁹ Pcy compromise further to discussion at 31 October 2008 meeting, suggestions by SE in DS 62/2008 and suggestion by DE to divide into separate paragraphs. The suggested paras 2 and 4 mirror the text of Article 3c(3); the suggested para. 3 is the text suggested by SE in DS 62/2008, it covers listed and non-listed items in order to avoid stricter controls on non-listed items, which are to be considered in general less sensitive.

[Article 3c (numbering inserted by Secretariat for clarity)]

- 1. The transit of non community dual use items listed in Annex I may be prohibited by the competent authorities of the Member State where the transit occurs if the items are or may be intended in their entirety or in part for uses referred to in Article 4 (1). When deciding on such a prohibition the competent authorities of the Member States shall take into account their obligations and commitments they have agreed to as parties to international treaties or as members of international non-proliferation regimes.**
- 2. Before deciding whether or not to prohibit a transit the competent authorities of the Member States may impose in individual cases an authorisation requirement for the specific transit of dual use items listed in Annex I if the items are or may be intended in their entirety or in part for uses referred to in Article 4(1).**
- 3. Member States may extend the application of Article 3c(1) to non-listed dual use items for uses referred to in Article 4(1) and to dual use items for military end-uses and destinations referred to in Article 4(2). The provisions of Articles 5(2), 5(3) and 5(4) shall apply to these national measures.]⁴⁰**

⁴⁰ Wording agreed at 31 October 2008 meeting of DUWP.

Article 3d(numbering inserted by Secretariat for clarity)

This Regulation does not apply to the supply of services or the transmission of technology if that supply or transmission involves cross-border movement of ...⁴¹ persons.

Article 4⁴²

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. 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 decided by a common position or joint action adopted by the Council or a decision of the OSCE or an arms embargo imposed by a binding resolution of the Security Council of the United Nations 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:
 - (a) incorporation into military items listed in the military list of Member States;

⁴¹ The word "natural" has been deleted from the "white" text of the recast with the agreement of Commission Services to reflect WTO commitments.

⁴² At the 21 April 2008 meeting of the DUWP, subject to replacement of the words «certain deadline» by «target» in the proposed Article 4(4) and "customs office and other" in the proposed Article 4(6), Pcy and Member States' agreed to the compromise as suggested in DS 30/2008 and reproduced here for paragraphs 4 and 6 of this article (the Cion's proposed new Article 4.8 is integrated into Article 4.4 in the compromise suggested in DS 30/2008). Cion could not accept this compromise. Thus in conformity with the rules of the recast technique it was concluded that since Cion did not agree to change the unshaded text in the recast, Article 4 should remain as contained in Regulation 1334/2000. At the 7 July 2008 DUWP, the Cion stated it had not changed its position; NL noted its disappointment at the Cion's apparent lack of cooperation

- (b) use of production-, test- or analytical equipment and components therefor, for the development, production or maintenance of military items listed in the abovementioned list;
- (c) use of any unfinished products in a plant for the production of military items listed in the abovementioned 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 have been exported from the territory of that Member State without authorisation or in violation of an authorisation prescribed by national legislation of that Member State.
-
- Council

Council
4. If an exporter is aware that dual-use items which he proposes to export, not listed in Annex I, are intended, in their entirety or in part, for any of the uses referred to in paragraphs 1, 2 and 3, 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 within a period of time to be determined by national laws or practices. Information on this period of time shall be made available to exporters, shall be notified to the Commission and the Member States and shall be published in accordance with the provisions laid down in Article 5(2), (3) and (4) ⁴³.
5. A Member State may adopt or maintain national legislation imposing an authorisation requirement on the export of dual-use items not listed in Annex I if the exporter has grounds for suspecting that those items are or may be intended, in their entirety or in part, for any of the uses referred to in paragraph 1.

⁴³ Pcy/Cion compromise suggested based on discussions at 3 September 2008 meeting of DUWP, when all MS and Cion agreed on the principle that MS should fix "target" periods for decision-making, and that these periods should be transparent.
At 6 October 2008 meeting of DUWP, DE/ET/ES/FI/IT/NL/SI/UK requested deleted of the last sentence of this paragraph (transparency requirement) doc. 10438/08 para. 1(vi))

Council
new suggested by Pcy in DS 30/2008.
Council

6. A Member State which imposes an authorisation requirement, in application of paragraphs 1 to 5, on the export of a dual-use item not listed in Annex I, shall, where appropriate inform the other Member States and the Commission. I...1 The other Member States shall give all due consideration to this information and shall inform ~~to the extent possible~~, their [customs offices and other]⁴⁴ relevant national authorities.
7. The provisions of Article 9(2) and (3) shall apply to cases concerning dual-use items not listed in Annex I.
8. This Regulation is without prejudice to the right of Member States to take national measures under Article 11 of Regulation (EEC) No 2603/69.

Article 5⁴⁵

1. A Member State may prohibit or impose an authorisation requirement on 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.

⁴⁴ At the request of FR, MSs could agree to delete the unshaded words "customs officer and other" at the 21 April 2008 meeting of the DUWP. Cion Services will consider whether Cion can agree to such deletion.

⁴⁵ SE informed that it was considering suggesting amendments to this Article (7 July 2008 DUWP)

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 Union*.

CHAPTER III

EXPORT AUTHORISATION

Article 6⁴⁶

1. A Community general export authorisation for certain exports as set out in Annex II is established by this Regulation.

new suggested by Cion in DS
38/2/2007REV 2

Council

- [(a) [...] Exporters that use the Community General Export Authorisation (EU 001) shall report to the competent authorities of the Member State where they are established of their first use of the Community General Export authorisation; such notification shall take place no later than thirty days after the date when the first *export took place*.⁴⁷]

⁴⁶ FR requested (in DS 92/2007) that wording of current note in Annex II part 3 para 4 of Regulation 1334/2000 be retained in the recast. At the 7 July 2008 DUWP FR confirmed this request, at least for items listed in Category 5, Part 2 of Annex I.

⁴⁷ FI supported the wording suggested by the Cion for Article 6(1); LU placed a reserve on this wording. UK/DE were able to support Article 6(1)(a) as suggested by the Cion. FR/NL preferred ex ante reporting of use of the CGEA. (cf. doc. 12964/07 paras 5 and 6 - outcome of proceedings of 14 September 2007 meeting of DUWP). At the 7 July 2008 DUWP LUX/NL confirmed preference for ex-ante reporting; FR stated its wish for the possibility to require ex-ante reporting at national level. AT was not in favour of ex-ante reporting. Cion, supported by DE, considered ex-ante reporting unnecessary, the CGEA would be referred to in the relevant box of the Customs Single Administrative Document. At 3 September 2008 meeting of DUWP NL and MT confirmed preference to ex-ante reporting, FR withdrew its request for ex-ante reporting.

At 31 October 2008 meeting of DUWP Cion suggested adding the following sentence to this sub-paragraph, " a MS may by national legislation, require that for any export under EU 001 from that MS of items listed in category 5 part 2 of Annex I that are not listed in Annex IV, complementary information from that MS be reported to the competent authorities of that MS. MS adopting such national legislation shall notify it to the Commission that will publish it in the OJ of the EU series C".

new suggested by Cion in DS 93/2007

Exporters shall also report in the Single Administrative Document the fact that they are using this authorization EU 001 by indicating in the box 44 the reference X001.

new suggested by Cion in DS
38/2/2007REV 2

I(b) The Community General Export authorisations cannot be used if:

- the exporter has been informed by his authorities that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in paragraphs 1 and 3 or uses referred to in paragraph 2 of Article 4 in a country subject to an arms embargo decided by a Common Position or Joint Action adopted by the Council or a decision of the OSCE or an arms embargo imposed by a binding resolution of the Security Council of the United Nations.

or if the exporter is aware that the items are intended for the above mentioned uses.

- or when the relevant items are exported to a customs free zone or free warehouse which is located in a destination covered by this authorisation]⁴⁸

[In those cases the competent authorities of the Member States shall assess the applications on the basis of the criteria listed in Article 8(1) to decide if the items can be exported with a global or individual export authorisation or if they must be denied]⁴⁹

2. For all other exports for which an authorisation is required under this Regulation, such authorisation shall be granted by the competent authorities of the Member State where the exporter is established. Subject to the restrictions⁴⁸ specified in paragraph 1, this authorisation may be an individual, global or general authorisation.
-

⁴⁸ Wording agreed by delegations (cf. doc. 10870/07 para. 18 - outcome of proceedings of 15 June 2007 meeting of DUWP).

⁴⁹ Cion would have liked to include this fourth indent proposed in DS 38/2/2007 (cf. doc. 10870/07 page 11 - outcome of proceedings of 15 June 2007 meeting of DUWP). At 7 July 2008 DUWP Cion preferred to retain this paragraph; DE/PL/UK considered it superfluous.

~~The authorisation~~ All the authorisations shall be valid throughout the European Community.

suggested by Cion in DS
38/2/2007REV 2 moved from Article
9(1) of recast proposal, and modified

Exporters shall supply the competent authorities with all relevant information required for their applications for individual and global export authorisation ~~so as to provide complete information to the national competent authorities in particular on the end-user, the country of destination, the end-uses of the item exported.~~ The authorisation may be subject, if appropriate, to an end use statement.

~~3. Items listed in Part 2 of Annex II shall not be included in a general authorisation.~~

Council

[__] 3. Member States shall process requests for individual or global authorisations within a period of time to be determined by national laws or practices. Information on this period of time shall be made available to exporters, shall be notified to the Commission and the Member States and shall be published in accordance with the provisions laid down in Article 5(2), (3) and (4)]⁵⁰

new
Council

[4. National general export authorisations shall:

(a) exclude from their scopes items listed in part 2 of Annex II [...]

(b) [...] be defined by national law or practices. They may be used by all exporters, established or resident in the Member State issuing these authorisations, if they meet the requirements set in this Regulation and in the complementary national legislation. They shall be issued in accordance with the indications set out in Annex IIIc. They shall be issued according to national laws and practice.

⁵⁰ Pcy/Cion compromise suggested based on discussions at 3 September 2008 meeting of DUWP, when all MS and Cion agreed on the principle that MS should fix "target" periods for processing requests, and that these periods should be transparent.

At 6 October 2008 meeting of DUWP, DE/ET/ES/FI/IT/NL/SI/UK requested deletion of the last sentence of this paragraph (transparency requirement) doc. 10438/08 para. 1(vi))

~~4. Member States shall indicate in general authorisations that these may~~

(c) not be used if the exporter has been informed by his authorities that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in paragraphs 1, [...] and 3 or uses referred to in paragraph 2 of Article 4 in a country subject to an arms embargo decided by a Common Position or Joint Action adopted by the Council or a decision of the OSCE or an arms embargo imposed by a binding resolution of the Security Council of the United Nations, or if the exporter is aware that the items are intended for the above mentioned uses.

Member States shall notify the Commission immediately of any national general export authorisations issued or modified. The Commission shall publish these of the C series of the Official Journal of the European Union.]⁵¹

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 item which may be valid for exports to one or more specified countries.

⁵¹ Pcy compromise wording further to DE/NL/UK comments on DS 61/2008 at 31 October 2008 meeting of the DUWP. Cion could in principle accept the comments by DE/NL/UK at the 31 October 2008 meeting.

6. Member States shall supply the Commission with a list of the authorities empowered to:
- (a) grant export authorisations for dual-use items;
-

new - suggested by Cion in DS 38/2007 and by Pcy in DS 41/2008

- (b) decide to prohibit the transit of non-Community dual-use items[listed in Annex I]⁵² in conformity with the provisions of Article 3c.
-

© 1334/2000 (adapted)

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

Council new suggested in DS 15/2008 and agreed at 26 February 2008
DUWP by MS +Cion
Council

Article 6a

- Authorisations for brokering services under this Regulation shall be granted by the competent authorities of the Member State where the broker is resident or established. These authorisations will be granted for a set quantity of specific items moving between two or more third countries. The location of the items in the originating third country, the end-user and its exact location must be clearly identified. The authorisations shall be valid throughout the European Community.**
 - Brokers shall supply the competent authorities with all relevant information required for their application for authorisation under this Regulation for brokering services in particular details of the location of the dual-use items in the originating third country, a clear description of the items and the quantity involved, third parties involved in the transaction, the third country of destination, the end-user in that country and its exact location.**
-

⁵² FR suggested that reference to Annex I is not needed, since there is already reference to 3c which includes Annex I. LUX and NL requested deletion of the words "listed in Annex I" DE wished to retain the wording in order not to refer to national add-ons. (30 May 2008 meeting of the DUWP),

[3. Member States shall process requests for authorisations for brokering services within a period of time to be determined by national laws or practices. Information on this period of time shall be made available to brokers, shall be notified to the Commission and the Member States and shall be published in accordance with the provisions laid down in Article 5(2) (3) and (4).]⁵³

4. Member States shall supply the Commission with a list of the authorities empowered to grant authorisations under this Regulation for the provision of brokering services. The Commission shall publish the list of these authorities in the C series of the Official Journal of the European Union.

Article 7

E 1334/2000
new

1. If the dual-use items in respect of which an application has been made for an individual export authorisation to a destination not listed in Annex II or to any destination in the case of dual-use items listed in Annex IV are or will be located, in one or more Member States other than the one where the application has been made, 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 10 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 10 working days, the Member State or States consulted shall be regarded as having no objection.

In exceptional cases, any Member State consulted may request the extension of the 10-day period. However, the extension may not exceed 30 working days.

⁵³ Pcy/Cion compromise suggested based on discussions at 3 September 2008 meeting of DUWP; Cion favoured the principle that Member States should fix "target" periods for processing requests, and that these periods should be transparent; DE preferred not to fix any target.
At 6 October 2008 meeting of DUWP, DE/ET/ES/FI/IT/NL/SI/UK requested deleted of the last sentence of this paragraph (transparency requirement) doc. 10438/08 para. 1(vi))

Council

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 10 working days. [...] In case the requested Member State decides to grant the authorisation, this should be notified to the Commission and other Member States using the electronic system mentioned in Article 9 (6).]⁵⁴

Article 8

Council
*new suggested in DS 15/2008 agreed at
26 February 2008 DUWP by MS +Cion
Council*

1. In deciding whether or not to grant an **individual or global export authorisation or to grant an authorisation for brokering services** under this Regulation the Member States shall take into account all relevant considerations including:
- (a) the obligations and commitments they have each accepted as ~~as~~ members of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties;
 - (b) their obligations under sanctions imposed by a common position or a joint action adopted by the Council or by a decision of the OSCE or by a binding resolution of the Security Council of the United Nations;

⁵⁴ Agreed at 31 October 2008 meeting of the DUWP.

- (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.
-

new

2. In addition to the criteria set in paragraph 1, when assessing an application for a global export authorisation, Member States shall take into consideration the application by the exporter of proportionate, adequate means and procedures to ensure compliance with the provisions and objectives of this Regulation and with the terms and conditions of the authorisation.⁵⁵

new suggested by Cion in DS 32/2008

3. [...] ⁵⁶

Article 9

Council
Suggested by Pcy in DS 41/2008 and agreed by Member States and Cion at 30 May 2008 meeting of the DUWP
(subject to a reserve by DK)
Council

1. The competent authorities of Member States, 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 export authorisation or when they have determined that the intended export is not to be authorised, they shall inform notify the competent authorities of the other Member States and the Commission thereof and exchange share the relevant information with them ~~the other Member States and the Commission~~. In case the competent authorities of a Member State has suspended an export authorisation, the final assessment shall be communicated to the Member States and the Commission at the end of the period of suspension.

⁵⁵ Agreed at 21 April 2008 meeting of the DUWP

⁵⁶ At 7 July 2008 meeting of the DUWP, delegations and Cion agreed to delete this suggested new paragraph.

- 2. The competent authorities of Member States shall review denials of authorisations notified under paragraph 1 within three years of their notification and revoke them, amend them or renew them. [The competent authorities of the Member States will notify the results of the review to the competent authorities of the other Member States and the Commission at least once a year] Denials which are not revoked shall remain valid.⁵⁷**
- 3 The competent authorities of the Member States shall notify the Member States and the Commission of their decisions to prohibit a transit of dual-use items listed in Annex I taken under article 3c without delay. These notifications will contain all relevant information including the classification of the item, its technical parameters, the country of destination and the end user .**
- 4. Paragraph 1 and 2 shall also apply to authorisations for brokering services.**
- 5. Before the competent authorities of a Member State, acting under this Regulation, grant an [...] authorisation for export or brokering services or decides on a transit they shall examine all valid denials or decisions to prohibit a transit of dual-use items listed in Annex I taken under this Regulation to ascertain whether an authorisation or a transit has been denied by the competent authorities of another Member State or States for an essentially identical transaction (meaning an item with essentially identical parameters or technical characteristics to the same end user or consignee.) It shall first consult the competent authorities of the Member State or States which issued such denial(s) or decisions to prohibit the transit as provided for in paragraphs 1 and 3. If following such consultation the competent authorities of the Member State decide to grant an authorisation or allow the transit, it shall notify the competent authorities of the other Member States and the Commission, providing all relevant information to explain the decision.**
- 6. All notifications required under this Article will be made via secure electronic means [including via a secure system that may be set up in accordance with Article 15.4]⁵⁸.**

⁵⁷ Wording suggested at 30 May meeting of the DUWP, delegations will verify that this wording complies with commitments under the export control regimes. Cion Services suggested replacing “at least once a year” by “as soon as possible”.

⁵⁸ SE wished to delete this phrase (30 May 2008 meeting of DUWP)

[7. All information shared in accordance with the provisions of this Article shall be in compliance with the provisions of Article 15(3), (4) and (6) concerning the confidentiality of such information]⁵⁹

Article 10

Council
*new suggested in DS 15/2008 and
agreed at 26 February 2008 DUWP by
MS +Cion*

1. All individual and global export authorisations **and authorisations for brokering services** shall be issued **in writing or by electronic means on forms containing at least all the elements and in the order** of the models set out in Annex III.
2. At the request of exporters, global export authorisations that contain quantitative limitations shall be split.
3. National General export authorisations granted under Article 6(2)~~to~~ shall be published in accordance with national laws **and practices**. They shall be issued in accordance with the indications set out in Annex III **and communicated to the Commission**.⁶⁰

⁵⁹ new sub-article transferred from Article 9(1) further to suggestions by delegations at 30 May 2008 meeting of the DUWP.

⁶⁰ To be discussed further (subsequent to decision not to resort to comitology) (cf.doc. 12964/07 para. 12 - outcome of proceedings of 14 September 2007 DUWP).

CHAPTER IV

UPDATING OF LIST OF DUAL-USE ITEMS

Article 11

- [1. 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 States has have accepted as a member members of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties.]⁶¹
-

Council
Council

[Annex IV, which is a subset of Annex I, shall be updated in conformity with Article 30 of the TEC]⁶²]

⁶¹ DE/FR/UK considered that reference to Annex IV of the current regulation should be retained in the recast regulation (cf.doc. 12964/07 para. 13 - outcome of proceedings of 14 September 2007 DUWP). Cion considers that deletion of Annex IV is justified. In their view international regimes cannot impose decisions within the EU that would affect the internal market, which is governed by the EU Treaty. As a subset of Annex I, Annex IV has been updated in the light of changes to Annex I since 2000. – see also footnote 61. Without prejudice to the views of Member States and Cion, as set out above, there may still be a need to provide for the possibility of amending Annex IV in instances where changes are not as a consequence of amendments to Annex I. This issue will need to be resolved at a future meeting of the DUWP.

DE/FR/IRL/LUX/SE/UK considered it would be useful for Article 11 to be amended in order to make clear that the annexes to the regulation could provide for controls on items in addition to those agreed in the context of the international export control regimes. IRL, supported by DE/FR, suggested it would be useful for the Annexes to make clear which items were subject to EU-specific controls.

⁶² At 31 October 2008 Cion suggested this additional paragraph. Pcy invited delegations to inform if they had objections or suggestions for alternative wording.

CHAPTER V

CUSTOMS PROCEDURES

Article 12

1. When completing the formalities for the export of dual-use items at the customs office responsible for handling the export declaration, the exporter shall furnish proof that any necessary export authorisation has been obtained.
2. A translation of any documents furnished as proof into an official language of the Member State where the export 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 the periods referred to in paragraph 4, suspend the process of export from its territory, or, if necessary, otherwise prevent the dual-use items listed in Annex I which are covered by a valid export 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.
4. In the case referred to in paragraph 3, 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 such competent authorities decide to maintain the authorisation, they shall reply within 10 working days, which, at their request, may be extended to 30 working days in exceptional circumstances. In such case, or if no reply is received within 10 or 30 days, as the case may be, the dual-use items shall be released immediately. The Member State which granted the authorisation shall inform the other Member States and the Commission.

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 Union*

Article 14

1 The provisions of Articles 843 and 912a to 912g of Regulation (EEC) No 2454/93 shall apply to the restrictions relating to the exportation, re-exportation and exit from the customs territory of dual-use items for the export of which an authorisation is required under this Regulation.

CHAPTER VI

ADMINISTRATIVE COOPERATION

Article 15

Council
suggested by Pcy DS 412008 and agreed
at 30 May 2008 meeting of the Working
Party, subject to a scrutiny reserve by
Ireland)
Council

1. Member States, in cooperation with the Commission, 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 to dual-use items 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 with a view to enhance the efficiency of the Community export control regime.⁶³ **Such information may include:**
- (a) **Details of exporters deprived, by national sanctions, of the right to use the National General Export Authorisations or Community General Export Authorisations**
- (b) **Data on sensitive end users, actors involved in suspicious procurement activities, where available, routes taken**
3. Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters⁶⁴, and in particular the provisions on the confidentiality of information, shall apply mutatis mutandis, without prejudice to Article 18 of this Regulation.
4. **A secure and encrypted system for the exchange of information among Member States and whenever appropriate the Commission may be set up.⁶⁵**
5. **The provision of guidance to exporters and brokers will be the responsibility of the Member States where they are resident or established. [The Commission or the Council may also publish guidance and/or best practices for the subjects referred to in this article.]⁶⁶**

⁶³ DE/FR/SE/UK support this wording (subject to improvement in drafting). ES/FI/AT expressed a reservation on this sub-article. Cion wants to retain wording suggested in DS 32/2008 (30 May 2008 meeting of DUWP)

⁶⁴ OJ L82, 22.3.1997, p.1.

⁶⁵ DE/PL reiterated concerns that documents exchanged should not be classified (i.e. should be for "limited" distribution, and not restricted). SE wanted classification RESTRICTED according to their national legislation.

⁶⁶ Cion Services could not agree to this sentence and will propose revised wording in due course.

6. **The processing of personal data shall be in accordance with the rules laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the movement of such data and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.**

CHAPTER VII

CONTROL MEASURES

Article 16

[...]

(sub-articles renumbered by Council Secretariat in order to follow a logical sequence)

**Council
suggested in DS 41/2008 and agreed at
30 May 2008 DUWP
Council**

- 1(i) Exporters of [...] dual use items shall keep detailed registers or records of their exports, in accordance with the national law or 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.

Council
suggested in DS 41/2008 and agreed at
30 May 2008 DUWP
Council

1(ii) In accordance with national law or practice in force in the respective Member

States, brokers shall keep registers or records for brokering services which fall under the scope of Article 3(b) so as to be able to prove, on request, the description of the dual-use items that were the subject of brokering services, the period during which the items were the subject of brokering services and the destination, the countries subject of brokering services.

Council (adapted)
suggested in DS 41/2008 and agreed at
30 May 2008 DUWP
Council

2. The registers or 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 **or the brokering services was provided.** They shall be produced, on request, to the competent authorities of the Member State in which the exporter is established **or the broker is established or resident.**

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 export 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 **or brokers involved in the supply of brokering services under circumstances set out in Article 3b.**⁶⁷

CHAPTER VIII

GENERAL AND FINAL OTHER PROVISIONS AND INTERNATIONAL COOPERATION

Article 18

New suggested by Cion in DS
93/2007

1. A Dual-use **Coordinating** Coordination Group chaired by a representative of the Commission shall be set up. Each Member State shall appoint a representative to ~~the Coordinating~~ this Group. It shall examine any question concerning this Regulation which may be raised either by the chair or by a representative of a Member State.
2. The Chair of the Dual-use **Coordinating** Coordination Group ~~may~~ shall, whenever it considers it to be necessary, consult ~~organisations representative of exporters, brokers and other relevant stakeholders~~ *economic actors* concerned by this Regulation.⁶⁸

⁶⁷ Suggested by Pcy in DS 15/2008 and agreed by Member States and Cion at 15 February 2008 meeting of DUWP (cf. outcome of proceedings doc. 6986/08)

⁶⁸ This version of Article 18 is suggested by the Cion in DS 38/1/2007 as a replacement for the version contained in the recast proposal.

new

Article 19

The Dual-use committee

...L ⁶⁹

Article 20

...L ⁷⁰

€ 1334/2000

new

Article ~~19~~21

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. They shall include criminal penalties at least for serious infringements of the provisions of this Regulation, such as an intentional export intended for use in a programme for the development or manufacture of chemical, biological, nuclear weapons or of missiles capable of their delivery without the authorisation required under this Regulation, or the falsification or omission of information with a view to obtaining an authorisation that would otherwise have been denied. ⁷¹

⁶⁹ Delegations have agreed to delete this proposed article (doc. 13753/07 para. 4 - outcome of proceedings of 12 October 2007 meeting of DUWP)

⁷⁰ Commission Services have withdrawn this proposed article (cf. doc. 13753/07 para. 15 - outcome of proceedings of 12 October 2007 meeting of DUWP)

⁷¹ The Cion took note of doc.11083/07 (DROIPEN opinion).AT/DE/EL/FI/FR/IRL/NL maintained their reserves on Articles 21 and 15(2) pending a revised proposal from the Commission. (cf. doc. 11838/07, paras 19-21). At 3 September 2008 meeting of DUWP, NL stated it could accept the replacement of this "recast" sentence with a the following single phrase: "They shall include criminal penalties for serious infringements of the provisions of this Regulation."

new
Council

Article 22

[...] ⁷²

Article 23

[...] ⁷³

© 1334/2000 (adapted)
new
Council

Article 2024⁷⁴

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 1921. The Commission shall forward the information to the other Member States. Every three years the Commission shall [review the implementation of this Regulation and] present a report to the European Parliament and the Council on [the] its application of this Regulation [, which shall include as appropriate proposals for its amendment]. Member States shall provide to the Commission all appropriate information for the preparation of the report [, such as the number of exporters using the authorisations available in each Member State, the number of different authorisations granted to exporters, the registers of companies using the Community General Export Authorisation, or the number of bilateral consultations carried out under different Articles of this Regulation].

⁷² Article deleted. At 3 September 2008 meeting of the DUWP; Cion could agree with MSs that this proposed article is superfluous.

⁷³ Cion confirmed withdrawal of this proposed article at the 7 July 2008 DUWP

⁷⁴ AT 31 October 2008 meeting of DUWP FI/PL/SE preferred to retain text contained in Article 20 of Regulation (EC) No. 1334/2000. NL/UK could accept first "recast" modification. Cion may propose alternative wording. (doc. 15261/08 para. 1(vii) - outcome of proceedings of 31 October 2008 meeting of DUWP)

Article 2125⁷⁵

~~1. An authorisation shall be required for intra-Community transfers of dual-use items listed in Annex IV. Items listed in Part 2 of Annex IV shall not be covered by a general authorisation.~~

~~2. (a) A Member State may impose an authorisation requirement for the transfer of other 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,~~
- ~~– export of those items to that final destination is subject to an authorisation requirement pursuant to Article 3, 4 or 5 in the Member State from which the items are to be transferred, and such export 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 to be transferred.~~

~~(b) The transfer authorisation must be applied for in the Member State from which the dual-use items are to be transferred.~~

⁷⁵ At the 30 May 2008 meeting of the DUWP Member States agreed to retain the wording of Article 21 of Regulation 1334/2000 for this article. Cion preferred to dispense with the notion of authorisations for intra-Community transfers; Pcy called on Member States to examine DS 45/2008 setting out the Commission Services' reasons for wishing to dispense with the notion of authorisations for intra-Community transfers. At the 3 September 2008 meeting of the DUWP Cion agreed to retain the wording of Article 21 of Regulation 1334/2000 for this article; on condition that a Council/Cion statement be inserted in the Council minutes upon adoption of the new regulation to the effect that Member States agree to consider the list of items for which a licence is required for intra-Community transfers (Annex IV) with a view to reducing the number of items contained in the list.

[...]

1. An authorisation shall be required for intra-Community transfers of dual-use items listed in Annex IV. Items listed in Part 2 of Annex IV shall not be covered by a general authorisation.

2 (a) A Member State may impose an authorisation requirement for the transfer of other 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;
- export of those items to that final destination is subject to an authorisation requirement pursuant to Article 3, 4 or 5 in the Member State from which the items are to be transferred, and such export 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 to be transferred.

- (b) The transfer authorisation must be applied for in the Member State from which the dual-use items are to be transferred.
- (c) In cases where the subsequent export of the dual-use items has already been accepted, in the consultation procedures set out in Article 7, by the Member State from which the items are to be transferred, the transfer authorisation shall be issued to the operator immediately, unless the circumstances have substantially changed.
- (d) A Member State which adopts legislation imposing such a requirement shall inform 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 items to non-Member States.
5. Documents and records of intra-Community transfers of dual-use items listed in Annex I shall be kept for at least three years from the end of the calendar year in which a transfer took place and shall be produced to the competent authorities of the Member State from which these items were transferred on request.
6. A Member State may, by national legislation, require that, for any intra-Community transfers from that Member State of items listed in Category 5, Part 2 of Annex I which are not listed in Annex IV, additional information concerning those items shall be provided to the competent authorities of that Member State.
7. 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 include, in particular, any sales contract, order confirmation, invoice or dispatch note.

Article 2226

This Regulation does not affect:

the application of Article 296 of the Treaty establishing the European Community,

the application of the Treaty establishing the European Atomic Energy Community.

Article 2327

Regulation (EC) No ~~2381/94~~ 1334/2000 is hereby repealed with effect from [...].

However, for export authorisation applications made before the date of entry into force of this Regulation, the relevant provisions of Regulation (EC) No ~~2381/94~~ 1334/2000 shall continue to apply.

new
Council

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex [...].

© 1334/2000 (new)

Article 2428

This Regulation shall enter into force 90 days after the date of its publication in the *Official Journal of the European Communities Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done in Brussels

For the Council

The President

ANNEX II

COMMUNITY GENERAL EXPORT AUTHORISATION No EU001

(referred to in Article 6 of Regulation (EC) No 1...)

Issuing authority: European Community

new

1... ⁷⁶

Part 1

This export authorisation covers the following items:

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.
—	0C001	«Natural uranium» or «depleted uranium» or thorium in the form of metal, alloy, chemical compound or concentrate and any other material containing one or more of the foregoing.
—	0C002	«Special fissile materials» other than those specified in Annex IV.
—	0D001	«Software» specially designed or modified for the «development», «production» or «use» of goods specified in Category 0, <i>insofar as it</i>

⁷⁶ MSs and Cion agreed to delete this paragraph at 6 October 2008 meeting of DUWP

		<i>relates to 0C001 or to those items of 0C002 that are excluded from Annex IV.</i>
—	0E001	«Technology» according to the Nuclear Technology Note for the «development», «production» or «use» of goods specified in Category 0, <i>insofar as it relates to 0C001 or to those items of 0C002 that are excluded from Annex IV.</i>
—	1A102	Resaturated pyrolysed carbon-carbon components designed for space launch vehicles specified in 9A004 or sounding rockets specified in 9A104.
—	1C351	Human pathogens, zoonoses and «toxins».
—	1C352	Animal pathogens.
—	1C353	Genetic elements and genetically modified organisms.
—	1C354	Plant pathogens.
—	7E104	«Technology» for the integration of the flight control, guidance, and propulsion data into a flight management system for optimisation of rocket system trajectory.
—	9A009.a.	Hybrid rocket propulsion systems with total impulse capacity exceeding 1.1 MNs.
—	9A117	Staging mechanisms, separation mechanisms, and interstages, usable in «missiles».

Part 3

This export authorisation is valid throughout the Community for exports to the following destinations:

Australia

Canada

Japan

New Zealand

Norway

Switzerland

United States of America

Note: Parts 2 and 3 may 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.

Conditions and requirements for use of this authorisation

1. This general authorisation may not be used 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, or if the exporter is aware that the items in question are intended for such use.
2. This general authorisation may not be used 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 for a military end use as defined in Article 4(2) of the Regulation in a country subject to an EU, OSCE or UN arms embargo, or if the exporter is aware that the items in question are intended for such use.
3. This general authorisation may not be used when the relevant items are exported to a customs free zone or free warehouse which is located in a destination covered by this authorisation.

~~4. The registration and reporting requirements attached to the use of this general authorisation, and the additional information that the Member State from which the export is made might require on items exported under this authorisation, are defined by Member States. These requirements must be based on those defined for the use of general export authorisations granted by those Member States which provide for such authorisations.~~

The registration and reporting requirements attached to the use of this general authorisation and the additional information that the Member State from which the export is made might require on items exported under this authorisation, are defined by Member States. These requirement must be based of those defined for the use of general export authorisations granted by those Member States which provide for such authorisations ⁷⁷

⁷⁷ DE/ES/FR/NL/SI/UK requested insertion of this condition at the 6 October 2008 meeting of the DUWP.

At 31 October 2008 meeting of DUWP, DE/ES/NL confirmed their request to retain this text; Cion suggested revised wording (cf. outcome of proceedings of 31 October 2008 DUWP, doc. 15261/08 para. 1(viii)), the Cion also reiterated its preference that this wording should be included in Article 61(a), rather than Annex II.

© 394/2006 Art. 1 and Annex
new
Council

ANNEX IIIa⁷⁸

(model form for individual or global export authorisation forms [...])

(referred to in Article 10(1))

new

When delivering the export authorisations, Member States will strive to ensure the visibility of the nature of the authorisation (individual or global) on the form issued

This is an export authorisation valid in all Member States of the European Union
until its expiry date

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(adapted)
new
Council

EUROPEAN COMMUNITY

EXPORT OF DUAL-USE ITEMS

[...]

(Reg. (EC) No ...)

LICENCE	1 Exporter	No	3. Expiry date (<i>if applicable</i>)	
			4. Contact point details	
	5 Consignee		6. Issuing authority	
	[...]			
	7 Agent/Representative (<i>if</i>	No	8. Country of origin	Code ⁷⁹

⁷⁸

At 6 October 2008 meeting of DUWP delegations agreed to delete references to "provision of brokering services from this form. In addition, DE/UK preferred to delete references to ITT, which they felt are superfluous. Cion could agree to delete references to ITT; such references are deleted in the current compromise text.

	<i>different from exporter)</i>	9 Country of consignment	Code ¹								
1	10. End user (<i>if different from consignee</i>)	11. Member State of current or future location of the items [...]	Code ¹								
		12. Member State of intended entry into the customs export procedure [...]	Code ¹								
		13. Country of final destination	Code ¹								
14. Description of the items ⁸⁰	15. Harmonised System or Combined Nomenclature Code (<i>if applicable</i> with 8 digit; CAS number if available)	16. Control list no (<i>for listed items</i>)									
	17. Currency and Value [...]	18. Quantity of the items [...]									
19. End use	20. Contract date (<i>if applicable</i>)	21. Customs export procedure [...]									
22. Additional information required by national legislation (<i>to be specified on the form</i>)											
<p>Available for pre-printed information</p> <p>At discretion of Member States</p> <table border="1"> <tr> <td colspan="2">For completion by issuing authority</td> </tr> <tr> <td>Signature</td> <td>Stamp</td> </tr> <tr> <td colspan="2">Issuing Authority</td> </tr> <tr> <td colspan="2">Date</td> </tr> </table>				For completion by issuing authority		Signature	Stamp	Issuing Authority		Date	
For completion by issuing authority											
Signature	Stamp										
Issuing Authority											
Date											

⁷⁹

See Regulation (EC) N°1172/95 (OJ L 118,25.5.1995,p10), as subsequently amended

⁸⁰

If needed, this description may be given in one or more attachments to this form (1bis). In this case, indicate the exact number of attachments in this box). The description should be as precise as possible and integrate, where relevant, the CAS or other references for chemical items in particular.

	17. Currency and value	18. Quantity of the items
14. Description of the items	15. Commodity code	16. Control list no
	17. Currency and value	18. Quantity of the items
14. Description of the items	15. Commodity code	16. Control list no
	17. Currency and value	18. Quantity of the items
14. Description of the items	15. Commodity code	16. Control list no
	17. Currency and value	18. Quantity of the items
14. Description of the items	15. Commodity code	16. Control list no
	17. Currency and value	18. Quantity of the items

Note: In part 1 of column 24, write the quantity still available and in part 2 of column 24, write the quantity deducted on this occasion.

23. Net quantity/value (<i>Net mass/other unit with indication of unit</i>)		26. Customs document (<i>Type and number</i>) or extract (<i>Nr</i>) and date of deduction	27. Member state, name and signature, stamp of deduction
24. In numbers		25. In words for quantity/value deducted	
1			
2			
1			
2			
1			
2			
1			
2			
1			

2			
1			
2			
1			
2			
1			
2			

EUROPEAN COMMUNITY

Provision of BROKERING SERVICES (Reg. (EC) No ...)

LICENCE 1	1 Broker / <i>Applicant</i>	No		3. Expiry date <i>(if applicable)</i>
	4. Contact point details			
	5 Exporter in originating third country		6. Issuing authority	
	7 Consignee in third country of destination		8. Member State in which the broker is resident or established	
	No		Code	
	9 Originating third country / <i>Third country of location of the items subject of brokering services</i>		Code ¹	
	10. End user in third country of destination (if different from consignee)		11 <i>Third country of destination</i>	
			Code ¹	
			12 <i>Third parties involved, e.g. agents (if applicable)</i>	
			13	
14. Description of the items.	15. Harmonised System or Combined Nomenclature Code (if applicable)		16. Control list no	
17. Currency and Value		18. Quantity of the items		
19. End use				
22. Additional information required by national legislation (<i>to be specified on the form</i>)				
Available for pre-printed information				
At discretion of Member States				

⁸¹Agreed by delegations and the Cion at the 21 April 2008 meeting of the DUWP

	For completion by issuing authority
	Signature
	Issuing Authority
	Date
	Stamp

ANNEX [...] IIIc

**COMMON ELEMENTS FOR PUBLICATION OF NATIONAL GENERAL
EXPORT AUTHORISATIONS IN NATIONAL OFFICIAL
JOURNALS**

(referred to in Article 10(3) and in Article 6 (3)

new

The explicit consent of the competent national authorities where the exporter is established must be given for any re-export under conditions that would not comply with those set by this authorisation.

1. Title of general export authorisation
2. Authority issuing the authorisation
3. EC validity. The following text shall be used:

««This is a general export authorisation under the terms of Article 6(2) of Regulation (EC) No ~~1334/2000~~ [...] . This authorisation, in accordance with Article 6(2) and 6(3) of that Regulation, is valid in all Member States of the European Union ~~Community~~»»

new

National validity: the period of validity of the authorisation must be mentioned

4. Items concerned: the following introductory text shall be used:

««This export authorisation covers the following items »»

5. Destinations concerned: The following introductory text shall be used:

««This export authorisation is valid for exports to the following destinations»»

6. Conditions and requirements : exporters have to register the use or their intention of use of the national general authorisation to national competent authorities of the Member State where they are established no later than 30 days after the first shipment.

ANNEX IV [...]

(List referred to in Article ~~21(1)~~ 25.1 of Regulation (EC) No ~~1334/2000~~ [...])

The entries do not always cover the complete description of the item and the related notes in Annex I⁸². Only Annex I provides the complete description of the items.

The mention of an item in this Annex does not affect the application of the provisions concerning mass-market products in Annex I.

PART I

[...] (possibility of National General Authorisation for intra-Community trade)⁸³

Items of stealth technology

1C001	Materials specially designed for use as absorbers of electromagnetic waves, or intrinsically conductive polymers. <i>NB: SEE ALSO 1C101</i>
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», «missile» subsystems or unmanned aerial vehicles specified in 9A012.
1D103	«Software» specially designed for analysis of reduced observables such as radar reflectivity, ultraviolet/infrared signatures and acoustic signatures.

⁸² The differences in the wordings/scopes between Annex I and Annex ~~IV~~Vare indicated with bold italic text.

⁸³ At 6 October 2008 meeting delegations agreed to retain the division of the products named in Annex IV into two parts, with the possibility of Part I products to be subject to NGAs (as in the current regulation). Cion objected to this division of the products, pointing out that to date no MS had notified an NGA for intra-Community trade of Annex IV products.

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. <i>NB: SEE ALSO 6B108</i>
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 cm ³ and having a detonation velocity greater than 8000 m/s.
1E201	«Technology» according to the General Technology Note for the «use» of goods specified in 1C239.
3A229	Firing sets and equivalent high-current pulse generators, as follows ... <i>NB: SEE ALSO MILITARY GOODS CONTROLS</i>
3A232	Detonators and multipoint initiation systems, as follows ... <i>NB: SEE ALSO MILITARY GOODS CONTROLS</i>
3E201	«Technology» according to the General Technology Note for the «use»

		of equipment specified in 3A229 or 3A232.
6A001		Acoustics, limited to the following:
6A001.a.1.b.		<p>Object detection or location systems having any of the following:</p> <ol style="list-style-type: none"> 1. A transmitting frequency <i>below 5 kHz</i>; 6. Designed to withstand ...;
6A001.a.2.a.2		Hydrophones ... Incorporating ...
6A001.a.2.a.3		Hydrophones ... Having any ...
6A001.a.2.a.6		Hydrophones ... Designed for ...
6A001.a.2.b.		Towed acoustic hydrophone arrays ...
6A001.a.2.c.		<p>Processing equipment, specially designed for <i>real time application with</i> towed acoustic hydrophone arrays, having «user accessible programmability» and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;</p>
6A001.a.2.e.		<p>Bottom or bay cable systems having any of the following:</p> <ol style="list-style-type: none"> 1. Incorporating hydrophones ..., <i>or</i> 2. Incorporating multiplexed hydrophone group signal modules ...;
6A001.a.2.f.		<p>Processing equipment, specially designed for <i>real time application with</i> bottom or bay cable systems, having «user accessible programmability» and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;</p>

6D003.a.	«Software» for the «real time processing» of acoustic data;
8A002.o.3.	<p>Noise reduction systems designed for use on vessels of 1000 tonnes displacement or more, as follows:</p> <p style="margin-left: 40px;">(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;</p>
8E002.a.	«Technology» for the «development», «production», repair, overhaul or refurbishing (re-machining) of propellers specially designed for underwater noise reduction.

Items of the Community strategic control — Cryptography — category 5 Part 2

5A002.a.2.	equipment designed or modified to perform cryptanalytic functions.
5D002.c.1	only «software» having the characteristics, or performing or simulating the functions, of equipment specified in 5A002.a.2.
5E002	only «technology» for the «development», «production» or «use» of the goods specified in 5A002.a.2. or 5D002.c.1. above.

Items of the MTCR technology

7A117	<p>«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), <i>except «guidance sets» designed for missiles with a range under 300 km or manned aircraft.</i></p>
7B001	<p>Test, calibration or alignment equipment specially designed for equipment specified <i>in 7A117 above.</i></p> <p><i>Note: 7B001 does not control test, calibration or alignment equipment for Maintenance Level I or Maintenance Level II.</i></p>

7B003		Equipment specially designed for the «production» of equipment specified in 7A117 above .
7B103		«Production facilities» specially designed for equipment specified in 7A117 above .
7D101		«Software» specially designed for the «use» of equipment specified in 7B003 or 7B103 above .
7E001		«Technology» according to the General Technology Note for the «development» of equipment or «software» specified in 7A117, 7B003, 7B103 or 7D101 above .
7E002		«Technology» according to the General Technology Note for the «production» of equipment specified in 7A117, 7B003 and 7B103 above .
7E101		«Technology» to the General Technology Note for the «use» of equipment specified in 7A117, 7B003, 7B103 and 7D101 above .
9A004		<p>Space launch vehicles capable of delivering at least a 500 kg payload to a range of at least 300 km.</p> <p><i>N.B.: SEE ALSO 9A104.</i></p> <p><i>Note 1: 9A004 does not control payloads.</i></p>
9A005		<p>Liquid rocket propulsion systems containing any of the systems or components specified in 9A006 usable for space launch vehicles specified in 9A004 above or sounding rockets specified in 9A104 below.</p> <p><i>N.B.: SEE ALSO 9A105 and 9A119.</i></p>
9A007.a.		<p>Solid rocket propulsion systems, usable for space launch vehicles specified in 9A004 above or sounding rockets specified in 9A104 below, with any of</p>

		<p>the following:</p> <p><i>N.B.: SEE ALSO 9A119.</i></p> <p>a. Total impulse capacity exceeding 1,1 MNs;</p>
9A008.d.		<p>Components, as follows, specially designed for solid rocket propulsion systems:</p> <p><i>N.B.: SEE ALSO 9A108.c.</i></p> <p>d. Movable nozzle or secondary fluid injection thrust vector control systems, <i>usable for space launch vehicles specified in 9A004 above or sounding rockets specified in 9A104 below</i>, capable of any of the following:</p> <ol style="list-style-type: none"> 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		<p>Sounding rockets, capable of <i>delivering at least a 500 kg payload to a range of at least 300 km.</i></p> <p><i>N.B.: SEE ALSO 9A004.</i></p>
9A105.a.		<p>Liquid propellant rocket engines, as follows:</p> <p><i>N.B.: SEE ALSO 9A119.</i></p> <p>a. Liquid propellant rocket engines usable in «missiles», other than those specified in 9A005, having a total impulse capacity equal to or greater than 1.1 MNs; <i>except liquid propellant apogee engines designed or modified for satellite applications and having all of the following:</i></p> <p><i>1. nozzle throat diameter of 20 mm or less; and</i></p>

		2. combustion chamber pressure of 15 bar or less.
9A106.c.	<p>Systems or components, other than those specified in 9A006, usable in «missiles», as follows, specially designed for liquid rocket propulsion systems:</p> <p>c. Thrust vector control sub-systems, <i>except those designed for rocket systems that are not capable of delivering at least a 500 kg payload to a range of at least 300 km.</i></p> <p style="text-align: right;">(COD)</p> <p>Technical Note:</p> <p style="text-align: right;">(COD)</p> <p><i>Examples of methods of achieving thrust vector control specified in 9A106.c. are:</i></p> <p><i>1. Flexible nozzle;</i></p> <p><i>2. Fluid or secondary gas injection;</i></p> <p><i>3. Movable engine or nozzle;</i></p> <p><i>4. Deflection of exhaust gas stream (jet vanes or probes); or</i></p> <p><i>5. Thrust tabs.</i></p>	
9A108.c.	<p>Components, other than those specified in 9A008, usable in «missiles», as follows, specially designed for solid rocket propulsion systems:</p> <p>c. Thrust vector control sub-systems, <i>except those designed for rocket systems that are not capable of delivering at least a 500 kg payload to a range of at least 300 km.</i></p> <p style="text-align: right;">(COD)</p> <p>Technical Note:</p> <p style="text-align: right;">(COD)</p>	

	<p><i>Examples of methods of achieving thrust vector control specified in 9A108.c. are:</i></p> <ol style="list-style-type: none"> <i>1. Flexible nozzle;</i> <i>2. Fluid or secondary gas injection;</i> <i>3. Movable engine or nozzle;</i> <i>4. Deflection of exhaust gas stream (jet vanes or probes); or</i> <i>5. Thrust tabs.</i>
9A116	<p>Re-entry vehicles, usable in «missiles», and equipment designed or modified therefor, as follows, <i>except for re-entry vehicles designed for non-weapon payloads:</i></p> <ol style="list-style-type: none"> a. Re-entry vehicles; b. Heat shields and components therefor fabricated of ceramic or ablative materials; c. Heat sinks and components therefor fabricated of lightweight, high-heat capacity materials; d. Electronic equipment specially designed for re-entry vehicles.
9A119	<p>Individual rocket stages, usable in complete rocket systems or unmanned aerial vehicles, capable of <i>delivering at least a 500 kg payload to a range of 300 km, other than those specified in 9A005 or 9A007.a. above.</i></p>
9B115	<p>Specially designed «production equipment» for the systems, sub-systems and components specified in 9A005, 9A007.a., 9A008.d., 9A105.a., 9A106.c., 9A108.c., 9A116 or 9A119 <i>above.</i></p>
9B116	<p>Specially designed «production facilities» for the space launch vehicles specified in 9A004, or systems, sub-systems, and components specified in 9A005, 9A007.a., 9A008.d., 9A104, 9A105.a., 9A106.c., 9A108.c., 9A116</p>

		or 9A119 above .
9D101		«Software» specially designed for the «use» of goods specified in 9B116 above .
9E001		«Technology» according to the General Technology Note for the «development» of equipment or «software» specified in 9A004, 9A005, 9A007.a., 9A008.d., 9B115, 9B116 or 9D101 above .
9E002		«Technology» according to the General Technology Note for the «production» of equipment specified in: 9A004, 9A005, 9A007.a., 9A008.d., 9B115 or 9B116 above . <i>Note: For «technology» for the repair of controlled structures, laminates or materials, see 1E002.f.</i>
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 above .
9E102		«Technology» according to the General Technology Note for the «use» of space launch vehicles specified in 9A004, 9A005, 9A007.a., 9A008.d., 9A104, 9A105.a., 9A106.c., 9A108.c., 9A116, 9A119, 9B115, 9B116 or 9D101 above .

— Exemptions:

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

1. that are transferred on the basis of orders pursuant to a contractual relationship 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 pursuant to a contractual relationship 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 pursuant to a contractual relationship placed in connection with a Community space launch development and production programme signed by two or more European governments;
4. that are transferred to a State-controlled space launching site in the territory of a Member State, unless that Member State controls such transfers within the terms of this Regulation.

[...] PART II

(no National General Authorisation for intra-Community trade)⁸⁴

Items of the CWC (Chemical Weapons Convention)

1C351.d.4		Ricin
1C351.d.5		Saxitoxin

Items of the NSG technology

All Category 0 of Annex I is included in Annex IV, subject to the following:

0C001: this item *is not* included in Annex IV.

0C002: this item *is not* included in Annex IV, *with the exception of* special fissile materials as follows:

a. separated plutonium;

b. «uranium enriched in the isotopes 233 or 235» to more than 20 %.

0D001 (software) *is included in Annex IV except insofar as it relates to 0C001 or to those items of 0C002 that are excluded from Annex IV.*

0E001 (technology) *is included in Annex IV except insofar as these related to 0C001 or to those items of 0C002 that are excluded from Annex IV*

⁸⁴ At 6 October 2008 meeting delegations agreed to retain the division of the products named in Annex IV into two parts, with the possibility of Part I products to be subject to NGAs (as in the current regulation). Cion objected to this division of the products, pointing out that to date no MS had notified an NGA for intra-Community trade of Annex IV products.

N.B.: For 0C003 and 0C004, only if for use in a «nuclear reactor» (within 0A001.a.).

1B226	<p>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.</p> <p><i>Note: 1B226 includes separators:</i></p> <p><i>a. Capable of enriching stable isotopes;</i></p> <p><i>b. With the ion sources and collectors both in the magnetic field and those configurations in which they are external to the field.</i></p>
1C012	<p>Materials as follows:</p> <p style="text-align: right;">(COD)</p> <p>Technical Note:</p> <p style="text-align: right;">(COD)</p> <p><i>These materials are typically used for nuclear heat sources.</i></p> <p>b. «Previously separated» neptunium-237 in any form.</p> <p><i>Note: 1C012.b. does not control shipments with a neptunium-237 content of 1 g or less.</i></p>
1B231	<p>Tritium facilities or plants, and equipment therefor, as follows:</p> <p>a. Facilities or plants for the production, recovery, extraction, concentration, or handling of tritium;</p> <p>b. Equipment for tritium facilities or plants, as follows:</p> <p>1. Hydrogen or helium refrigeration units capable of cooling to 23 K (-250 °C) or less, with heat removal capacity greater than 150 W;</p> <p>2. Hydrogen isotope storage or purification systems using metal</p>

		hydrides as the storage or purification medium.
1B233		<p>Lithium isotope separation facilities or plants, and equipment therefor, as follows:</p> <ol style="list-style-type: none"> a. Facilities or plants for the separation of lithium isotopes; b. Equipment for the separation of lithium isotopes, as follows: <ol style="list-style-type: none"> 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		<p>Lithium enriched in the lithium-6 (${}^6\text{Li}$) 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.</p> <p><i>Note: 1C233 does not control thermoluminescent dosimeters.</i></p> <p style="text-align: right;">(COD)</p> <p style="text-align: center;">Technical Note:</p> <p style="text-align: right;">(COD)</p> <p><i>The natural isotopic abundance of lithium-6 is approximately 6,5 weight per cent (7,5 atom per cent).</i></p>
1C235		<p>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.</p> <p><i>Note: 1C235 does not control a product or device containing less than $1,48 \times 10^3 \text{ GBq}$ (40 Ci) of tritium.</i></p>

1E001	«Technology» according to the General Technology Note for the «development» or «production» of equipment or materials specified in 1C012.b.
1E201	«Technology» according to the General Technology Note for the «use» of goods specified in 1B226, 1B231, 1B233, 1C233 or 1C235.
3A228	<p>Switching devices, as follows:</p> <p>a. Cold cathode tubes, whether gas filled or not, operating similarly to a spark gap, having all of the following characteristics:</p> <ol style="list-style-type: none"> 1. Containing three or more electrodes; 2. Anode peak voltage rating of 2,5 kV or more; 3. Anode peak current rating of 100 A or more; <i>and</i> 4. Anode delay time of 10 µs or less; <p><i>Note: 3A228 includes gas krytron tubes and vacuum sprytron tubes.</i></p> <p>b. Triggered spark gaps having both of the following characteristics:</p> <ol style="list-style-type: none"> 1. An anode delay time of 15 µs or less; <i>and</i> 2. Rated for a peak current of 500 A or more;
3A231	<p>Neutron generator systems, including tubes, having both of the following characteristics:</p> <p>a. Designed for operation without an external vacuum system; <i>and</i></p> <p>b. Utilizing electrostatic acceleration to induce a tritium deuterium nuclear reaction.</p>
3E201	«Technology» according to the General Technology Note for the «use» of equipment specified in 3A228.a., 3A228.b. or 3A231.
6A203	Cameras and components, other than those specified in 6A003, as follows:

	<p>a. Mechanical rotating mirror cameras, as follows, and specially designed components therefor:</p> <ol style="list-style-type: none"> 1. Framing cameras with recording rates greater than 225000 frames per second; 2. Streak cameras with writing speeds greater than 0,5 mm per microsecond; <p><i>Note: In 6A203.a. components of such cameras include their synchronizing electronics units and rotor assemblies consisting of turbines, mirrors and bearings.</i></p>
6A225	<p>Velocity interferometers for measuring velocities exceeding 1 km/s during time intervals of less than 10 microseconds.</p> <p><i>Note: 6A225 includes velocity interferometers such as VISARs (Velocity interferometer systems for any reflector) and DLIs (Doppler laser interferometers).</i></p>
6A226	<p>Pressure sensors, as follows:</p> <ol style="list-style-type: none"> a. Manganin gauges for pressures greater than 10 GPa; b. Quartz pressure transducers for pressures greater than 10 GPa.

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Council

[...]

[...]