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LIMITE

DUAL USE 1
COMER 1
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CONOP 1
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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Delegations

Subject: Outcome of Proceedings of the Working Party on Dual Use Goods of 15 January 2025

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (31.03.2025)

1. Priorities of the Polish Presidency

The Presidency introduced its overall priorities for the first semester of 2025 with main focus on security and defence matters. As for the priorities for Dual Use WP, the Chair outlined, among others, adoption of temporary controls on dual use items, discussions on catch-all controls, establishment of a high-level policy forum on export controls with a directors' level meeting planned in April, and intensified, and targeted exchange of views on export control policy, in confidential setting, as appropriate.

2. European Economic Security Strategy

A. White Paper on Export Controls

a) First 'Proposed Response': First 'Proposed Response': Uniform controls in the EU – Commission Delegated Act

DUWP continued discussions on the first proposed action in the Commission White Paper on Export controls, namely, introduction of controls via delegation of powers to the Commission under the Article 17 of the Dual Use Regulation. The Chair of DUWP provided a presentation on the state of play, recalling the context and progress made since December. He reiterated that there is common agreement by MS on need to have controls adopted urgently.

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DUWP will revert to the

item at its forthcoming meeting in February.

b) Second ‘Proposed Response’: ‘Recommendation for a better coordination of new National Control Lists

The Commission updated on the state of play. There have been no developments since December. The draft recommendation, as agreed by DUCG, is now undergoing interservice consultations in the Commission, after which, the DUCG will be consulted again before its submission to the WP on Dual Use Goods and subsequent adoption by both the Commission and the Council.

c) Third ‘Proposed Response’: High-Level policy forum on export controls.

The Chair of DUWP provided a presentation of the results of the *tour de table*, as held on 17 December 2024. The Chair first referred to the mandate of the WP, outlining work of DUWP as regards information exchange on dual use policy. He also highlighted White Paper on Export Controls which proposes creation of a dedicated forum to discuss developments at the appropriate senior level to foster common EU positions, take account of the single market dimension of export control developments, and to prepare and coordinate action at international level. Finally, Council conclusions on White paper called on the Presidency to make full use of the Council Working Party on Dual Use Goods, including by organizing periodic High-Level meetings of the working party on key export control policy issues.

It was recalled that on 17 December, DUWP held a *tour de table* focusing on three questions around the utility of such forum and possible topics. Answers by MS showed that most of the MS considered such forum would best fit within the DUWP and should be convened if there was need for that. The meetings should be periodic and flexible. Some MS considered that COREPER should remain as coordinating body. The stakeholder’s involvement was seen as justified and useful. MS said that other WP chairs, technology experts and presidents of regimes should be invited, as well as industry representatives and academia. In this regard, many MS regretted that COM had suspended the Export Control forum where engagement with stakeholders took place. Concerning topics for discussion, most often the need to solve current issues e.g. deadlocks, was mentioned to give necessary guidance towards clear decision making. Debate should be linked to the European economic security strategy, and focus on geopolitics e.g. third countries measures, the impact of those measures on the EU. Some MS mentioned the evaluation of the Dual-Use Regulation, and discussion on the results from the implementation as good topics for high level debate. Coordination of export control policies, sanctions on dual use technology, research security, situation in the regimes, common approach on triggering catch-all on certain items, harmonised use of catch-all – were also mentioned amongst other topics.

In the subsequent exchange of views, MS reiterated their positions by highlighting value and importance of discussing export controls at higher political level. They found the discussion timely, especially in light of the recent geopolitical developments, export controls adopted by third countries and situation in regimes. The Presidency duly noted MS comments. Follow-up discussion is envisaged in February DUWP meeting and Presidency will soon share the planned date for the high-level meeting.

B. Other initiatives under the Economic Security Strategy and synergy with export control on dual use goods.

The Presidency provided updates on other initiatives linked to the EESS. The Chair of DUWP announced that Commission is expecting to publish on 15 January a Recommendation on outbound investment monitoring review. Outbound investment expert group will meet on 20 January to receive a presentation from DG TRADE on the recommendation which will be discussed in detail at a later stage (another meeting planned on 27 February).

References to dual-use technology are very visible in the recommendation, also it must be noted that export control authorities participate in the COM expert group on outbound investments, therefore, DUWP should be looped into the process concerning outbound investment transaction reviews and risk assessments. One of the purposes of the recommendation is to perform information gathering exercise on outbound investment transactions that are accompanied by technology transfers.

Chair also briefly mentioned ongoing work in the COM on economic security doctrine. The doctrine is being developed according to the mission letter to COM DG Trade and Economic security Commissioner Sevkovic and will be presented to the Member States later this year.

3. Implementation of Regulation (EU) 2021/821

A. Synergies with DUCG and TEGs

a) Dual Use Coordination Group

COM reported on work of the Dual Use Coordination Group in 2024. The group met eight times and engaged on export control policy developments. There were also exchanges on implementation of Articles 9 and 10, in view of the better coordination. COM highlighted success in the implementation of the DUR with application of Article 10 by one Member State. DUCG also prepared grounds for TEG on ITT and discussed issues such as national general export authorizations, catch-all clause. The priorities for 2025 will be presented in DUCG meeting on 16 January. One of the priorities would be to focus on catch-all implementation, together with the DUWP.

b) Enforcement Coordination Mechanism

COM reported on ongoing work and priorities for ECM. In 2024, the mechanism recorded its first year of real activity. Six meetings of ECM took place. COM welcomed increasingly proactive engagement from MS experts. ECM is gradually turning to a more result-oriented approach with contributions from experts from various MS. COM encourages and welcomes this momentum. In the future, ECM requires even more substantial inputs from MS to progress towards result driven approach and to increase ECM visibility. COM considers that there is need to demonstrate added value of this tool. COM outlined areas where progress was achieved:

1) Mapping of penalties: ECM is trying map and get overview of penalties which apply to export control transactions. The work should continue to get the full picture. COM calls on MS to coordinate internally. 2) Work will also continue on development of a system to exchange information on enforcement related matters. There have been series of presentations on case studies, on which ECM could build on, and try to promote real time info exchange, poss., through DuES.

3) ECM could support MS capacity in identifying illegal exports and actions in relation to illegal exports. COM has identified some EU exports to RU which are potentially anomalous and invites MS to analyse them, as well as to work proactively on detection of illegal/anomalous transactions.

4) There should be also a possibility to have coordinated EU level enforcement action for circumvention cases. Enforcement is national prerogative; however, this doesn't exclude coordinated action at EU level.

c) Intangible Technology Transfer (ITT)

COM updated on ongoing work of the TEG on ITT. ToRs for the technical expert group were shared in DUCG, with a deadline for comments end of January. DUCG is taking place on 16 January where the ToRs could be discussed further and, if they seem mature, DUCG will be invited to endorse them.

d) EU Dual Use Pool of Experts - report of activities in 2024 and perspectives for 2025

COM (JRC) reported on the activities done in 2024 and prospects for 2025. The mechanism has been set up in 2011. So far, 2024 has been the most active year. 31 replies were provided to 12 MS authorities. Biggest numbers of requests concerned exports of information security and telecommunications equipment. The average time for reply has been 3 weeks. Occasional very long delays due to lack of knowledge, or because awaiting a feed-back from other POC. The advice was provided by experts from European Commission JRC, Belgium, Spain, German BAFA.

As for the prospects for 2025, there is need to update the list of experts, as well as to confirm commitment by all POC/experts. The scope of work is also evolving, covering not only questions related to dual use listed items, but also ML related questions and sanctions. Customs cases remain very relevant. The question about technical reach-back to third countries remain open. If approved, it could be reserved to EU candidate countries only and/or to the stable partners (such as NO).

In the ensuing exchange of views, MS broadly welcomed the work of JRC steering the PoE and the assistance provided, they also encouraged the use of this tool. They considered that activities in PoE do not hamper work of technical staff who sees the opportunity to develop knowledge and experience on matters. FR expressed readiness to participate in the PoE to the extent possible.

e) Planning of Technical Expert Groups

COM informed on the dates of planning meetings of the groups:
DUCG: 16 January, 11 March, 15 May: all hybrid meetings. ECM – 13 March and 5 June in presence.

B. National Policy and Legislation

a) Application of Article 9 and 10 of Regulation (EU) 2021/821

COM updated the Group about the annual publication of MS measures adopted under Articles 9 and 10. Currently COM is working with experts from BAFA to prepare the compilation and it will be published towards the end of 1st quarter of 2025.

b) Exchange of information regarding export control policy

The Presidency presented a non-paper on the exchange of information regarding Export Control Policy (WK 122 2025 INIT). The Presidency would like to hold more focused exchange of information with other Member States regarding their national export control policies. Such an exchange of information would concern primarily export control policies in relation to specific countries, regions, items and in relation to the changing geopolitical situation and recent developments in export control field. Each Member State would be invited to propose a concrete topic for discussion. Depending on the scope of the expected discussion, two paths would be proposed: a) Open item on the agenda of the Dual Use Working Party meeting or 2) Confidential item on the agenda that would be scheduled for DUWP meeting sufficiently in advance.

In exchange of views, MS thanked for the paper and expressed support to the standing agenda item to discuss topics. Importance of ensuring confidentiality was highlighted by many. They also welcomed the active role of the Presidency. Some MS expressed reservation on further convergence or establishing new export control policies, as these are CFSP matters and related to national prerogatives. However, exchange itself would be very valuable. Several MS saw a positive interlinkage with the High-Level policy forum on export controls. COM encouraged MS not to antagonise the harmonised approach, as there are many export control actions which would benefit from common approach.

c) Other changes to national export control policies or legislation

Two MS informed about recent developments concerning national export control measures related to semiconductor manufacturing items and about revision of national export control policy in relation to national and general authorisations for low risk level exports. MS will receive detailed presentations in DUCG.

d) Catch-all policy discussion

The Presidency presented its non-paper, “Mapping issues related to the implementation of catch-all in Art. 4” (WK 123 2025 INIT). The Presidency is of the opinion that differences in interpretation and implementation among Member States have become more pronounced due to the growing need to use this type of mechanism due to the current geopolitical situation. A discussion should be held on whether this mechanism meets the current challenges posed by the new geopolitical situation, to identify possible shortcomings and to seek short or long-term solutions.

Currently, the issue of implementing the catch-all clause is being examined and discussed in the Dual-Use Coordination Group. In order to speed up the entire process on examining the implementation of the catch-all clause, the Presidency would like to complement the work by organising an additional tour-de-table at the meeting of DUWP on 10 February. At the same time, the Presidency proposes to start mapping the most important problems related to the interpretation and the implementation of Article 4.

COM reported on the work done and planned regarding implementation issues of catch-all on DUCG. There is need to make sure that there are no overlaps with the Presidency led mapping exercise, but complementarity.

In the ensuing discussion, MS welcomed the paper, the approach proposed by the Presidency and considered discussion on the catch-all implementation as key priority. They also called for synergies with technical work carried out in DUCG. While there was general support to discuss the scope of the Article 4, some expressed concerns about the ultimate objective of the exercise, because changing provisions of the Article 4, by broadening the scope, would mean reviewing the Regulation itself.

The Presidency acknowledged parallel process in DUCG. DUWP will hold a TdT in February, to supplement questions asked in CG. The Chair of DUWP also explained that the objective is to map policy issues and to provide clarifications – what is meant by embargo and how the scope can be broadened or narrowed. The Presidency is aware that catch-all comes up also in the context of sanctions, however, the aim is to separate these two discussions.

4. Engagement with stakeholders

EECARO provided a presentation, focussing on intersection between export controls and research security. The presentation also touched upon Intangible Technology Controls from an academia perspective. In the introductory remarks, EECARO representative outlined history of EECARO, the activities, publications and memberships. He also shared information about EECARO Annual Conference on 12 February 2025.

Focussing on intersection between export controls and research security, the objectives are to manage risks, avoid direct and indirect discrimination and stigmatisation, raise awareness and boost resilience, as well as balance the commitment to research security and the commitment to academic freedom, openness and collaboration in research. EECARO has also provided its feedback to COM public consultation regarding economic security strategy, notably, on research security, on dual-use research and white paper on export controls.

Focusing on intangible Technology Transfer Controls from an academia perspective, EECARO recalled its non-paper on the improvement of ITT controls (25 October 2024) which was submitted to the Commission. EECARO recognises that one of the most challenging export compliance issues for the research sector is dealing with ITT. There is an uneven level playing field, enormous difference in the implementation of controls, starting with common understanding of the terminology used in the Dual Use Regulation. There is need to have a harmonized approach. Extremely difficult for academia is to understand issues with publications submitted to export controls. It is not clear who is considered responsible for ‘making available’ a publication. Finally, EECARO is looking forward to establishing a new TEG within the Commission to deal with ITT guidelines.

In their comments, MS and the Commission thanked for the work carried out, agreed on the importance of the topic and need for closer cooperation with academia, especially, concerning publications. They referred to TEG and upcoming guidelines as a positive development. NL referred to the seminar organized in 2024 on knowledge security, focusing on different topics, such as outreach to researchers, policy for non-EU applicants.

5. Multilateral Export Control Regimes

No update.

6. Third Countries Updates

a) United States

COM updated the MS about the latest round of US export controls on its artificial intelligence chips industry. These come in light of US attempts to restrict the transfer of the most advanced chips to non-trusted actors. The new controls foresee that companies from 18 key allies and partners (Tier1), including 10 EU Member States, meeting the highest security and trust standards can benefit from full exemption from the measures restricting shipment of chip manufacturing and graphics processing units used for AI. Much longer list of countries (Tier-2), including the rest of EU member states (17), will have to apply for an export licence. Tier-3 category states are considered by US as 'non-trusted'.

Following the US announcement, European Commissioners for Technology and Trade and Economic security, Henna Virkkunen and Maroš Šefčovič, published a joint statement expressing concern about the measures. As for the methodology and criteria used to designate countries as allies, many questions remain open. This question has been raised bilaterally with the US by DG Trade but received no answer. The US itself publicly stated that the jurisdictions with robust technology protection regimes and technology ecosystems that are aligned with the national security and foreign policy interests of the US, are to be considered as allies. The Commission partially linked the measure with the EU fragmented export control system.

In the discussion, many MS expressed concerns about the divisive approach by the US and listing criteria used. There was a broad agreement to raise the topic at higher political level, either by discussing it in the DUWP at Directors' level or at COREPER. The Commission invited MS to provide any information and data about the negative or positive impact of US measures on their industries and companies.

b) Norway

COM reported on the meeting with Norway that took place on 19 December 2024. The meeting was chaired by DG Trade representative, with the participation of the Presidency and the EEAS for the arms export control aspect. The meeting focused on regulatory developments, NO presented its new agency for export control analysis, export control application and support. COM will share the report of the dialogue in due time. NO has indicated that they wished to increase cooperation on enforcement of export controls. Engagement with NO could be envisaged in ECM, upon confirmation of ECM members. Next dialogue will take place early March in Oslo.

c) China

COM reiterated call to share information on CN on-site visits. Another invitation by the Commission is to share information on CN export controls on raw materials. Since August 2023, China has enacted a number of export controls on raw materials, focusing controls on materials which it deems of strategic importance such as semiconductors, green energy technology, and military and dual-use equipment.

The Commission would like to seek Member States' views on how China's export control measures on raw minerals has impacted industry and supply chains in the EU since mid-2023. COM will circulate a non-paper and a questionnaire after DUWP meeting with some guiding questions.

7. Dual Use related issues of EU restrictive measures

a) State of play

The Presidency and the Commission briefed the Group on updates and ongoing work related to EU restrictive measures on dual use technologies, notably, in light of 16th package of sanctions. Changes would concern three important aspects - adding several items to the advanced technologies of Annex VII (chemical precursors, CNC machine software, controllers, chrome-plated compounds), expanding the list of entities supporting the Russian military sector (30 entities at the moment), reviewing legal provisions aimed at tightening controls. According to COM, the topic of a dedicated catch-all related to sanctions should also be discussed. The publication of the proposal was scheduled for January 27.

b) Requests and information exchange with partners

COM informed on requests and information exchanges with partner countries. COM has sent to the delegates an invitation to share licensing information with the US - the request concerns data from 2024, in particular regarding sensitive countries.

6. AOB

None

Next DUWP meeting: 10 February 2025
