



Council of the
European Union

Brussels, 15 May 2023
(OR. en)

8316/23

LIMITE

COMER 46
CFSP/PESC 569
CONOP 29
ECO 32
UD 82
ATO 20
COARM 92

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
Subject:	Outcome of proceedings of the Working Party on Dual Use Goods of 13 April 2023

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (30.06.2023)

1. The mandate of the Dual Use Working Group

The Chair of the DUWP updated on the process relating to the revision of the Dual-Use Working Party mandate. The Task Force ended its work on March 24th. Following this, a finalised version was submitted to the DUWP through Delegates Portal for consideration.

The mandate is designed to be future proof, giving clear guidance for the work of the DUWP. The core work of the WP is the Dual Use Regulation, including policy making, legislation, information exchange etc., entailing also work on emerging/advanced technologies as reflected in the Regulation. The suggested mandate acknowledges the added value that the technical expertise of the WP, its delegates and EUMS technical experts may provide in relation to work of other Council Preparatory bodies.

Most of the delegations that took the floor expressed their support for the revised version. Two Member States and the Commission announced further comments in writing. The Council Legal Service confirmed that in its view the draft is balanced, flexible and future proof. The deadline for written inputs was set 27 April.

New draft will be distributed in light of comments received. The Presidency aims to finalise the mandate in written consultation before its submission to Coreper for approval in May.

2. Tour de Table on Implementation and Enforcement of the Regulation EU 2021/821

DUWP received a presentation by the Swedish Radiation Safety Authority (~~DELETED~~) on a Decision Relating to Export Control and Publication, focusing on challenges, possible consequences of not granting export licence, national legislation vs EU laws and possible solutions.

Intervening MS thanked for sharing experience on a concrete case, considered it as a useful input. COM flagged that there has been calls from major EU Research organisations for more guidance to be provided. This case shows that there might be need to update the existing guidelines for researchers to clarify some aspects. MS also highlighted the importance of the outreach to universities.

Tour de Table on ITT and Academia

DUWP held a Tour-de-Table exchange on export control & academic publications (cf. Presidency document WK 4566/23).

On the question concerning outreach to industry and/or academia regarding publishing of export-controlled technology, almost all the MS replied positively. MS reported that outreach both to the industry and academy is taking place in form of round tables, workshops or awareness raising seminars, or *ad hoc* consultations on bilateral basis. Many delegations referred that they used the guidelines for researchers in their outreach events. Majority of MS carried out consultations on publications of the technology transfers and cloud services. Few MS have been involved only in the outreach to the industry, however, their plan is to reach out to the academia as well. As for the difficulties, it was mentioned that it was challenging to communicate with the representatives of the academia who are not familiar to export controls and are attached to the freedom of expression. In these cases, establishment of the ICP is crucial to ensure ownership and security of the research.

In relation to questions received from industry and academia regarding the ITTs and publishing of export-controlled technology, MS reported that the majority of questions related to the fundamental research, cooperation with universities in third countries, cloud services and publications.

More specifically, questions to national authorities are also asked about transfers of controlled items to the third countries, research funding, patent applications, whether publication needs to be sent to the authority for approval before publication, and controls of the content that scientists deliver as lectures abroad. Some MS have received questions related to Article 5 application (on technical assistance), on emerging technology and its classification, on artificial intelligence, advanced computing. A few MS pointed out that they have not received any specific questions.

Only four delegations confirmed that they have received applications for publishing of export-controlled technology. Some reported that they have received many requests prior a possible application for a licence, without concretising the application. Most recurrent concern for the applicant is to clarify whether a licence is needed. Amongst those MS that have received application for the ITT, majority had denied the licence.

Concerning the general view on publishing of export-controlled technology, majority of MS considered it necessary to require an export licence for the publications concerning sensitive dual-use technology, especially if article includes information on how the dual-use item can be used. In principle, if the technology is already controlled, the publication should not be authorised. Almost all MS would follow a restrictive approach and assess the application on case-by-case basis and would carry out a thorough risk assessment. It was also mentioned, that an option would be to allow a partial publication, excluding controlled parts. Most frequently mentioned challenges for controls of academic publications were interpretation of the ‘in the public domain’, intellectual property, freedom of expression.

MS also considered that the outreach to the research organisations and academia should be reinforced with clearer and more comprehensive guidelines to researchers on cases where export licence is required. Best practice sharing and more frequent exchanges of experience amongst MS would also be appreciated.

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

a) Annual update of Annex I – state of play and timeline

The Commission informed DUWP that the exceptional update of the Annex I (in light of AG control lists) has been submitted to scrutiny procedure in the Council and the Parliament ending on

24 April. If no objection by the EP and the Council, the act will be adopted by the end of April or beginning of May.

Concerning the annual update of Annex I, the draft has been presented to the DUCG, the Council and the EP. Interservice consultation will be launched soon by the Commission.

b) Updates on work in technical groups

COM updated DUWP on work in technical groups.

TEG: The Commission outlined main results of the stakeholder consultation on Guidelines for data collection and preparation of the EU export control annual report under Regulation EU/2021/821 that took place from 24 January to 28 February 2023. In total, 21 responses were received from Industry associations, individual companies, academia, civil society and NGOs.

As for the next steps, the guidelines should be finalised at technical level in April and submitted for the endorsement by DUCG in May. Subsequently, DUWP will be invited to take note and transmit the draft guidelines to the Council for the approval, via COREPER. Approval of the guidelines by the Council is foreseen in the Article 26 (2) of the revised DU Regulation

Provisional timetable: DUWP endorsement on 16 May, COREPER on 24 May and Council (FAC – Trade) on 25 May.

After the guidelines are approved by the Council, the Commission will launch internal procedures to adopt the guidelines by the College by July in form of a Recommendation of the Commission.

COM stressed importance of timely preparation and transmission of data to the Commission by the MS. An IT note will be prepared for that purpose. The transmission of data between MS and the Commission will take place through e-licencing system for those MS that use it and via a new tool for the MS outside e-licencing system.

STEG: last meeting took place on 16 March. Draft guidelines on the export of cyber-surveillance items under Article 5 of Regulation (EU) No. 2021/821 were submitted to the public consultation on 31 March (ending on 9 June). As for the planning, the aim is the same as for the Transparency and data gathering guidelines – internal procedures to be finished by end of August, the draft guidelines will be submitted to the DUWP and to the Council for approval. Next STEG will take place on 20 April.

ETEG: next meeting to take place on 4 May. Discussions in the ETEG focus on emerging technology developments and regulatory measures on emerging technologies, EU Risk Assessment Framework for emerging technologies, quantum risk assessment, EU Risk Assessment Framework to peptide synthesisers.

c) Outcome of Hearings in PEGA and INTA Committees of the European Parliament

The Commission briefly informed the DUWP about the outcomes of the discussions on export controls held by the European Parliament PEGA Committee (18 March) and INTA Committee (1 March). In PEGA Committee MEPs were interested to clarify some aspects of the Dual-Use Regulation. It was recalled that PEGA had concerns on misuse of technology not only within the EU but also in relation to exports outside of the EU originating from EU MS. PEGA Committee report is to be voted in May/June by the EP and will most likely include recommendations for the export controls.

In INTA Committee the EP is now framing export control discussions in a broader context of the economic security. The hearing took place *in camera* due to the sensitivity of some issues raised. As for the main takeaways, it is clear that MEPs are still following up the long term concerns – transparency on exports of cybersurveillance items, however, by linking them to current and upcoming challenges, such as controls on emerging technologies, coordination with partners. Some MEPs inquired whether the EU export control system was fit for purpose in relation to the current and upcoming challenges – RU invasion in Ukraine and CN strategic competition in area of advanced technology.

There is a wish in the EP to ‘Europeanise’ export controls. Other questions raised by the MEPs concerned raw materials, security of supply chains. INTA is looking at export controls in a broader context and raised questions also on the outbound investment screening tool.

MS were invited to remain in close contacts with the Commission to contribute to a future debate with the EP on export controls.

d) Cooperation with Third Countries

COM provided information concerning upcoming dialogues on export controls with Canada and Norway. Consultations with Canada were scheduled for 21 April (postponed) and semestrial structured export control dialogue with Norway will take place end of May/June (tbc).

e) EU-US TTC Export Control WG

The Chair informed about the planned ministerial meeting that will take place on 30-31 May in Lulea, Sweden. A document containing the overview of involved Council preparatory bodies as well as a tentative timeline for their discussions, has been distributed by the Presidency. DUWP has received the document.

The Commission updated on plans for the next meeting of EU-US TTC Export Control Working Group 7. A preliminary agenda has been distributed to the Delegations.

The meeting is tentatively scheduled for 10 May. The meeting is planned as a full day, hybrid meeting in Brussels with US representatives in presence.

Subsequently, COM outlined draft agenda as distributed on the Delegates Portal, describing topics, the lead for each topic and possible outcomes. Topics for the exchanges with US partners include: technical consultations on current and upcoming legislative and regulatory developments, including on double-licensing issue, re-exports of dual-use items and trade facilitation, adjustment of control lists, exchange of information on US risk assessments and control parameters for unilateral and extraterritorial rules and impact on strategic supply chains; Technical consultations on sensitive dual-use technologies, including on specific emerging technologies – such as quantum technologies, surveillance technologies; Export restrictions in the context of sanctions to Russia and Belarus.

Taking into account MS comments from floor, it was decided that written comments on the draft agenda and on possible outcomes for the 4th Ministerial meeting would be expected until 19 April cob. A virtual meeting with DUWP and the COM will take place on 21 April to review the topics and choreography of the meeting.

4. Export Controls in a Broader Context

a) Outbound Investment screening

A representative of DG TRADE introduced the topic by explaining that political attention has recently started to focus on the role of outbound investment in the development of emerging technologies in certain countries. There are growing concerns about risks that EU outbound investment in sensitive technologies, AI or robotics could strengthen foreign military capabilities and undermine EU security.

Last fall, the Commission in its work program for 2023 has highlighted the need for developing a strong set of strategic trade and investment controls to strengthen EU's economic security.

Moreover, it has outlined that it will be assessed whether additional tools are necessary in respect of outbound strategic investments controls. The statement of 10 March by President Von der Leyen and President Biden underlined the need to prevent the leakage of sensitive emerging technologies and other dual-use items to destinations of concern that operate civil-military fusion strategies.

In this respect, the aim of the Commission would be to upgrade existing tools, such as controls related to exports, inbound investment and research cooperation, to correspond to a changing geostrategic environment. Outbound investment is to be considered as a complementary tool in preventing EU companies' capital, expertise, and knowledge from empowering technological advances that will enhance the military and intelligence capabilities of EU's strategic rivals.

Lastly, COM representative recalled the remarks by President Von der Leyen on 13 March after her visit to China on the risk of leakage of sensitive emerging technologies that needs to be addressed through export controls or investment screening.

In the context of this political steering, COM services are launching a fact gathering exercise to provide factual basis for further discussions. The aim is to scope the issues linked to this debate and the extent to which outbound investments are linked to the transfer of export controlled technologies or know-how.

DG TRADE hopes to share preliminary results in coming weeks. Technical discussions are ongoing also with the US with aim of clarifying the scope of planned US measures.

The initial discussion has been launched across different settings. In addition to the exchanges in DUWP, Trade Policy Committee (Full members) will have an informal meeting in Stockholm on 21-22 April to focus on the subject amongst other subjects.

In order to provide basis for an EU position, Commission and MS need to better understand linkages between outbound investment by EU companies and countries of concern. As a first step, COM has prepared a detailed questionnaire to the members of the DUWP (cf. WK 5471/23). The results of the questionnaire will inform on-going reflections and demonstrate the need, if any, for action and possible areas for additional assessment.

MS were invited to reply to the questionnaire by 24 April. A dedicated secured information channel has been created in the Dual Use Electronic system.

When taking the floor, MS considered that the topic was still very recent and could provide only preliminary comments. They would be interested in concrete examples of outbound investment screening and to see how outbound investments link with dual-use export controls. MS also called for further explanations on what is considered to be an outbound investment and would be the scope of envisaged measures. Furthermore, COM was invited to provide more elements on the envisaged US outbound investment screening tool and its potential impact on EU economic interests.

Concluding the topic, the Presidency invited COM to report on the outcome of the fact finding exercise, as well as on the results of discussions in related settings and to keep MS regularly up-to-date.

5. Restrictive measures Russia/Belarus related to dual-use

COM recalled latest meetings with experts preparing the revision of restrictive measures.

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Focusing on stock-taking, the Commission recalled its presentation at previous DUWP. Some work strands were identified for future work – implementation, enforcement, common approach to implementation of legal issues and outreach to industry. In this respect, specific guidance for industry has been developed focusing on implementation of DU exports, a dedicated outreach in that area would be still needed.

On trade monitoring – COM is investigating trade flows, to better tackle circumvention. On enforcement – COM works towards supporting the Special Envoy for sanctions implementation.

In their comments, MS stressed that focus on sanction implementation should remain key. They highlighted need to take into account findings on the battlefield when designing new scope for sanctions. Effective implementation of existing restrictive measures was also highlighted. MS would like to get more detailed information on the implementation of the sanctions, to see export trends, as well as learn from other MS on specific cases.

One MS regretted that no action was taken on strengthening measures towards Belarus which constitutes a very easy way to divert exports. Preventive measures should be also taken with regards to Kazakhstan.

6. AOBs

- **Multilateral Export control Regime Meetings:** The Chair of DUWP informed the Group about the upcoming at MTCR RPOC meeting to take place in Paris on 20-21 April. The Presidency will deliver EU Statements, drafts have been circulated and coordinated in CONOP community. Germany announced it will deliver statement on the Plenary Chairing arrangements and informed about the LEOM co-chairing by DE representative. DE invited other MS to support the candidature of the DE Chair of the NSG Consultative Group for a second term.
- The Chair of DUWP provided brief outline of the **CONOP/COARM Directors Informal Meeting** in Stockholm 27-28 March relating to export controls

7. Next DUWP meetings: 16 May, 15 June