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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 23
May 2022

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (12.07.2022)

1. Implementation of Russia/Belarus sanctions

a) Update of the sanctions related to dual use goods and advanced technologies

Following discussions at DUWP in March and April, Member States took stock of the state of play of sanctions related to dual use goods and advanced technologies.

COM (DG Trade) recalled previous discussions on sanctions. The most recent consultation with MS took place virtually on 4 May. Until now, five packages of sanctions have been adopted. Concerning the 6th package, discussions continue at the highest political level. The part on export controls seems to be acceptable to MS, but diverging views persist on other aspects of the package.

COM outlined main elements of the 6th package concerning dual use goods and advanced technologies (amendments to regulation 833/2014), namely: 1) extension of Annex VII with the addition of certain chemicals that could be qualified as emerging threats and be potentially used as weapons. 2) Extension of Annex IV, by adding new entities. 3) Addition of two countries, UK and South Korea, to the list of partner countries.

Subsequently, COM delivered two presentations on implementation and enforcement of sanctions on Russia, providing an overview of the implementation of Articles 2, 2a and 2b of Regulation 833/2014 at EU level. The second presentation by JRC focused on trends analysis on denials and authorisations. Member States welcomed informative and detailed presentations, however, they asked for further clarification and guidance by COM on how to introduce denials into DUeS, since they can be reported both under sanctions regulation and under the Dual Use Regulation. Several delegations complained about the rising number of requests for classification by customs authorities. A number of MS suggested adding original names in Russian for entities under sanctions, as well as the description of the activities and webpages of those entities. COM took due note of MS comments. Several MS reported that they were looking into concrete cases, with extra attention given to applications and alerts from exporters where they consider that the export project may lead to an indirect export to Russia. Several MS reported that they had started outreach campaigns to the private sector to raise awareness about the latest set of EU sanctions.

b) Technical review, legal review and review of entities (documents available on DueS)

COM (DG Trade) gave a brief outlook on planned technical and legal review, as well as review of entities placed under sanctions. COM will gather questions and contributions by exporters in order to update guidance and FAQ. Depending on nature of contributions received, a legal review of some Articles might be necessary. Delegations were invited to actively contribute to this process and comment on documents available in DUeS, especially with regard to possible new items to be listed. If necessary, the mandate of dual-use pool of experts could be expanded to englobe tasks related to sanctions.

c) Dialogue with third countries related to sanctions

DUWP noted that the UK and South Korea would be listed as partner countries in the next sanctions package. COM recalled its proposal for an exchange of information with partner countries through DUeS and outlined that the US had already shared some information with EU MS in this respect. COM proposal concerns the development of new functionalities in the DUeS, to support and facilitate information exchange with partner countries, through a ‘push the button’ solution. Although majority of Member States supported exchange of information with partner countries on implementation of sanctions towards RF and Belarus, including by sharing aggregated data, they also expressed concerns whether the DuES platform, used for internal exchanges of sensitive information, would be the best solution. While supporting pragmatic approach to facilitate the sharing of information in practical terms, Member States would wish to have more time within

DUWP to reflect on legal basis, security guarantees, reciprocity and conditions. The temporary and specific nature of this information exchange should be in particular taken into account.

In the absence of a separate module in DUeS for voluntary and reciprocal information exchange between partner countries and EU, COM invited MS to report on their denials on *ad hoc* basis, similarly to the US practice. MS were also invited to provide further ideas and solutions for a mechanism allowing for an info exchange in a secured manner.

d) Enforcement and risk of circumvention

COM informed that FAQ on dual use related sanctions implementation will be updated soon, taking into account questions sent by companies and MS. Enforcement coordination mechanism will meet in June and would focus on identifying actions in support to the implementation of sanctions. One Member State drew attention to possible circumvention of sanctions via subsidiary companies based in China and invited COM to consider provisions addressing this risk. COM emphasized that cooperation with Ukraine should be enhanced, to counter sanctions evasion and minimise diversion risks. In this respect, COM recalled proposal by Conflict Armament Research to increase actions in Ukraine with the aim to counter diversion of dual use goods.

DUWP Chair invited MS to reflect on different options and solutions, and to revert to the topic at one of forthcoming DUWP meetings.

2. Trade and Technology Council EU - US : Working Group Nr 7 (Export Control)

a) Outcome of the 2d TTC meeting (16 of May, Saclay)

COM (DG Trade) gave a short readout of the second EU-US TTC principals meeting that took place on 16 May in Paris-Saclay. Two general sessions were organised – a strategic discussion between principals and a discussion with ten working groups' chairs. A stakeholder event took place in the margins. The main statement of the EU-US TTC principals was coordinated by Coreper, but annex on export controls was discussed and agreed by DUWP in several rounds of consultations, duly taking into account MS comments. Very last amendments were introduced at the highest political level. Main outcomes are the following: both sides reaffirmed their close cooperation to address global trade and technology challenges in line with their shared commitment to democracy, freedom and human rights. EU-US TTC reiterated the central role of the TTC for the renewed transatlantic partnership, which has already served to coordinate joint measures by EU and US in face of Russian aggression in Ukraine. Work will continue to be organized in 10 working groups. Shared commitment to continue supporting Ukraine was made, both sides agreed to work

jointly in rebuilding UA and its economy. On export controls, EU-US TTC partners agreed to build on and enhance cooperation on export restrictions on dual use items and advanced technologies. Next principals meeting is scheduled for autumn 2022, in the US.

b) Work Programme TTC WG7

Work program for TTC ECWG7 has been under discussion in DUWP since last December and amended several times. A new version has been prepared by COM to take into account increased cooperation with the US on Russian sanctions and a proposal for regular info exchange. The work programme will be submitted for adoption by both partner sides during the second ECWG meeting in June. The Work Programme sets out common actions, timelines and goals to be achieved in short and longer term.

It was suggested to adjust the title in work programme to reflect better the focus of the group on sanctions related export restrictions (to distinguish that export controls and sanctions are not the same). Furthermore, some Member States reiterated wish for further prioritization of topics and remained cautious about the ambitious timelines set for the implementation of actions. A revised version, taking into account MS comments, will be prepared and distributed to delegations, with a view of its approval by DUWP during short written consultation.

c) 2d ECWG (Brussels, 7-8 June)

Following first successful meeting on 26 January, the second EU-US Export Control Working Group meeting will take place on 7-8 June in Brussels. COM has distributed revised agenda, based on first draft that was submitted to MS beginning of May. The Group examined the draft agenda proposed by COM item-by-item, identifying common points of discussion and possible lead (COM or EU/EU MS) for each item.

A revised version, taking into oral comments made during the discussion, will be circulated and placed under a short written consultation. The Netherlands and Spain confirmed their presentations.

3. Implementation of the Regulation EU 2021/821

a) Progress of the Technical Expert Groups and upcoming meetings

DUWP took note of the progress achieved in the activities of the expert groups and the DU Coordination Group (DUCG) for the implementation of Regulation (EU) 2021/821 - in particular as

regards controls of emerging technologies (ETEG), cyber-surveillance technologies (STEG), transparency (DCT-TEG) and enforcement (ECM).

DCT-TEG: a meeting is scheduled on 24 May, and will focus on tangible results to be achieved and decisions to be made. A proposal on guidelines has been submitted to the group. COM aims to launch public consultation by September.

STEG: a meeting is to be convened soon. Substantial expert input is still pending.

ECM: one meeting is scheduled for 30 June, back to back with DUWP. An additional meeting of ECM might be planned early June to focus on RU sanctions implementation.

b) Delegated Act to update Annex I of the Regulation (EU) 2021/821

DUWP took note that the first draft of the delegated act has been finalized and circulated to technical experts in BAFA and JRC. Some small amendments have been made. The file will be sent to DU Coordination group soon. Despite some initial delays, the aim is to adopt the act by the end of the year. Delegations asked for timely translations of the delegated act.

4. Multilateral Export Control Regimes (MTCR, NSG, AG/CWC, WA)

a) Wassenaar Arrangement

DUWP took note of the outcome of the WA General Working Group, that met in Vienna on 18-19 May. This meeting took place after the cancellation of Expert group meeting in the context of invasion of Ukraine by Russia. During the WA GWG meeting, a number of delegations expressed their firm opposition to the war waged by Russia and an EU statement was delivered by the EU rotating presidency.

Ireland in its capacity of WA Plenary chair recalled that discussions on coordination of positions of EU MS participating in WA and EU statements are taking place in COARM group. IE as WA Plenary chair is not taking any stance, but keeps assessing any possible solution. IE noted that the general understanding of all participating states is that replacing the regime now is not an option. It is the one and only forum where States can work seriously and address the urgent matters that require their attention in the field of export control listings. Both RF and UA are ready to pursue meetings. WA should be considered as a technical forum, rather than a political setting. A decision on new Head of Secretary (candidacies of Hungary and Switzerland) will be taken in autumn, after an assessment conducted in June.

The next GWG will take place in October 2022, and the Plenary session - by the end of 2022. The situation will require some further assessment of the state of play before deciding on the relevant course of action. DUWP will continue to be regularly updated on the developments in WA.

b) Nuclear Suppliers Group

Poland in its capacity of NSG Plenary chair informed DUWP that the first session of Consultative group took place in Vienna beginning of May, also Technical expert groups and LEEM meeting were held and preceded by intersessional meetings by Chair, focusing on current security situation and its impact on the implementation of NSG guidelines. Meetings were attended by many delegations and the European Commission (JRC). RF and CN were absent. Majority of speakers expressed full support to UA and called RF to stop its military aggression. Participating governments pointed to the legitimacy to discuss the RF aggression on UA in the context of NSG, due to occupation of nuclear installations and threat of using nuclear weapons. Preparations for plenary are underway and it will take place in Warsaw, in June.

COM (JRC) informed that out of 20 proposals under discussion in NSG, 18 were previously introduced and two – on switching devices (DE) and on heavy water (CN) are new. All the proposals are uploaded in DUEs.

c) Australia Group

COM briefly informed the group about latest developments in Australia Group. The UK proposal on genetically modified organisms has been adopted in May. The AG Plenary will take place in presence from 4-8 July in Paris. COM will participate with a presentation on revised Dual Use Regulation 821/2021 and on sanctions regulation, focusing on chemical and biological related matters within RF sanctions regulation. Seven new proposals have been submitted by 20 May. One on marine toxins, proposed by US, feature already on US export control list.

d) MTCR

Presidency outlined that the preparations for the Plenary session of MTCR in Montreux (17-21 October 2022) are advancing well. First information has been circulated by Swiss presidency. There are still no candidates to replace Swiss presidency. Meeting of RPOC that was scheduled to take place in France on 14-15 April was cancelled and political work of the regime is temporarily suspended.

Technical expert meeting in London has been cancelled with no new date envisaged. Information Expert meeting and Technical exchange meetings will take place in October in Montreux.

e) EU P2P Programme

COM [DELETED] gave presentation on strategic trade controls outreach activities of the European Commission, financed by NDICI instrument. Objective of these activities is the establishment, consolidation or updating of Strategic Trade Control systems on dual-use goods in partner countries by offering a long-term cooperation and mutual economic benefits through: increasing awareness of risks and requirements around dual-use items; building capacity, including in supporting the elaboration of a legal framework, to stop a shipment of listed goods and/or to stop a shipment of unlisted goods based on intelligence input; building capacity for proactive controlling of dual-use items through an effective licensing process; building capacity to conduct enforcement actions/investigations and prosecutions of violations. A broad range of activities are tailor-made for specific audiences. The EU's cooperation programme on export controls of dual-use goods began in 2004 with only four members, from South East Europe. Today it has expanded to include more than 30 countries from 6 regions. Thanks to the Programme's activities and the active engagement of its partners, more than 17 countries have formally adopted some version of the EU dual-use control list in their national legal frameworks. Approximately 200 experts with diverse professional backgrounds from across the European Union offer technical expertise to the various EU P2P projects.

MS welcomed the detailed presentation. On MS question about the interaction with the US in the coordination of the outreach process, to avoid duplication of efforts, COM explained that contacts with US counterparts are close at regional level, however, not necessarily through common programmes, but rather at information exchange level. At local level, EU teams try to coordinate with the US partners, also with the view of avoiding 'outreach fatigue', especially in fields where multitude of partners are present.

5. Policy areas related to dual-use goods export control

a) The Strategic Compass

The EEAS [DELETED] gave a short presentation on the Strategic Compass, focusing on its origins, content, specific initiatives it contains and next steps in the implementation process.

It was noted that there is not that much focus in the Strategic Compass on dual-use export controls, however there is clearly some interesting elements when it comes to new defense initiatives and investments in defence, joint procurements, critical technologies, research in new and advanced technologies and threat analysis. In this context, denials or authorisations of exports of certain advanced technologies could become important elements to be taken into consideration.

Member States welcomed the detailed and comprehensive presentation and expressed wish to be updated also in the future about the new initiatives and communications resulting from the implementation of the Strategic Compass.

6. Third country cooperation

a) Dialogue with Norway (13 June 2022)

EU-Norway export control dialogue will take place on 13 June with COM leading the discussions. Delegations can submit their suggestions for agenda. Besides regular agenda items on denials, export authorisations, outreach and others, dialogue should have focus also on sanctions and reinforced cooperation on this matter. NO will be invited to become a partner country under RF Sanctions regulation 833/2014 and to align its export restrictions with EU.

b) Dialogue with Taiwan

COM reported that EU and Taiwan trade dialogue will resume on 2 June after a suspension of two years. It will be chaired at ministerial level and will include trade issues, investment cooperation and strategic trade questions. Export controls will be one small part of discussions; however, there is a possibility to explore areas for enhanced cooperation on this matter. DUWP will be updated on the outcome of the dialogue.

7. AOB

- **Romania** informed the Group about its new national legislation, aligned with Dual Use Regulation.
- **COM** reminded about a vacancy for a SNE position at DG TRADE and invited MS to encourage application of their candidates.
- **COM** announced that US Department of Commerce will organise its annual conference on export controls (29 June – 1 July), focusing on sanctions, extraterritoriality, guidelines for

companies on due diligence and exports of surveillance technology. COM will participate at deputy director level.

Next DUWP meeting: 29 June in Brussels (physical meeting)

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