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LIMITE

DUAL USE 2  
COMER 64  
CFSP/PESC 768  
CONOP 49  
ECO 47  
UD 121  
ATO 28  
COARM 124

## 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 June 2023

**DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (21.09.2023)**

### 1. The Dual Use Working Group Mandate

The Presidency updated the group on the approval of the revised DUWP mandate in CRP on 14 June. The Chair noted the changes made after discussions at Antici: under the policies section an added reference to the RELEX WP, and a removed reference to restricted measures. The revised text received broad CRP support (cf. ST 9923/23 REV2).

The Presidency thanked MS for their contributions and engagements and noted the effectiveness during the process.

### 2. Implementation and Enforcement of the Regulation EU 2021/821

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

The Commission briefed on the exceptional updates to the DU Regulation 2021/821, in light of Australia Group new proposals, which were published on 25 May and have entered into force since then.

The annual updates are undergoing their regular procedure.

Once translation process is complete over the summer, the Commission will share the draft delegated act with MS by mid-late August. The Commission invited MS to share specific contact points to be used for translation requests over summer. The adoption of the Delegated Act by the Commission is intended for the beginning of September.

*b) Updates on work in technical groups*

The Commission updated on the progress in technical groups.

**ETEG:** MS will be invited to a meeting on 5 July to finalize the two pending risk assessments and to address MS comments on the previous version. It will take stock of discussions at the last TTC meeting on emerging technologies and on the follow-up, and will share the further revised version with MS.

**STEG:** COM reported that the public consultation on Guidelines for cybersurveillance exports has been finalized on 9 June, with submission of more than 800 comments, including comments from industry associations. The next steps are to analyze the comments, adjust the guidelines accordingly, and discuss with MS the outcome in STEG in July. The foreseen timing for publication is for autumn, date tbc. The comments will be shared, either in the form of a summary or an compiled version (still tbc).

**Data collection and Transparency TEG:** The Commission gave update on the ongoing Guidelines for the data collection and reporting submitted to DUCG, which is under internal inter-service consultation, ahead of the process for adoption – though the timelines for adoption are still tbc. It is expected to conclude interservice consultations, with a written procedure and adoption by College for the end of August. They will be published in form of a Recommendation by the Commission. The Commission made note of work on the IT functionality, to be finalized in June to start collecting data for the annual report preparations.

COM is planning to send final version of guidelines to the DUWP soon, and inform DUWP of any substantial changes from interservice-consultations. The Council should be able to adopt the guidelines in autumn.

*c) Changes to national export control policies*

Several Member States informed DUWP of changes and updates to their national export control policies, most of them adopted in the framework of Article 9 of the Dual use Regulation. It was also highlighted that a dedicated meeting of DUCG will take place on 3 July to discuss the implementation of Articles 9 and 10 of DU Regulation.

### 3. Restrictive measures Russia/Belarus related to dual use

#### *a) Preparation of new measures: outcome of different technical reviews*

The Commission shared elements concerning new measures. Number of proposals to strengthen the export restrictions of sensitive items has been added. Discussions soon to be concluded on 11<sup>th</sup> package and measures adopted, reinforcing toolbox to counter RU invasion of UA. The list of advanced technology items has been expanded by additional technologies in Annex VII, covering items found on the battlefield and shared by UA sources. Also the list of entities has been expanded to put under export restrictions companies in third countries, involved with circumvention of EU measures, as well as those who maintain close links with RU military industrial complex.

COM briefly outlined measures taken by the Special envoy on sanctions implementation, such as outreach to third countries (Turkey, Uzbekistan, Azerbaijan, Kazakhstan). The focus of the EU is now to strengthen EU's defences and actions against risks of diversion and circumvention. This could be also achieved through enforcement of sanctions, by exchanging information and coordinating with partners.

In the discussion, MS stressed the need for enhancing informal exchanges between appropriate authorities and to avoid duplication of information channels used. COM confirmed that DUEs would be configured to take into account new legal necessities and realities. FAQ will be updated after the adoption of 11<sup>th</sup> package, and COM will organise regular review meetings to assess new possible measures.

#### *b) Information exchange and alignment with partners*

The Commission highlighted that Switzerland will be added to Annex VIII as an official partner country. **DELETED**.

The Commission intends to organise a dedicated info session with partners after the adoption of the 11<sup>th</sup> package. **DELETED**.

*c) Update on tentative meeting with RELEX*

The Presidency informed on the state of play, providing clarification on how the DUWP experts should best feed into work of RELEX. The Chair shared options for informal and formal meetings between RELEX and DUWP or working via request of RELEX. He concluded that the Spanish Presidency will follow up the coordination with RELEX WP.

#### **4. Tour-de-Table**

*a) Presentation by Stockholm International Peace Research Institute (SIPRI)*

SIPRI (*Giovanna Maletta*) gave a presentation on export controls of cloud services. She outlined different models of cloud computing, highlighted the various uses of these services, noting the rapid developments, and increasing use of cloud services. Under the Dual Use Regulation, cloud computing would fall under transmission of software by electronic means. Based on this, companies providing these kinds of service may be exporting control software/data. There is unclarity about where and to who these controls apply.

SIPRI focused on the remaining aspects following the recast that also required clarity for cloud computing, such as new language recommended for DU regulation with implications on cloud computing controls, cloud computing and export controls (access from outside the EU, encryption, subject to licensing requirements, access of a controlled software being seen as an export). The issue of administration access being constituted as an export was also discussed. SIPRI recommended some guidance to clarify these issues.

SIPRI noted the different approaches to some of these questions by different MS and partners and that some have access to experts/more technical knowledge about these areas than others. Further EU guidance would reduce burden on national authorities and on companies.

As to how the EU and MS can form common views on some or all of these issues, SIPRI recommended connecting national and EU level discussions on different aspects of export controls and cloud computing in a more strategic manner. It would mean connecting the different EU instruments in the field of export controls and cloud computing more effectively by elevating discussions of these issues to a higher political level and better connecting the EU instruments in export controls and other relevant areas.

There needs to be more informed discussion on ITT through establishment of coordination group and closer cooperation with private sector, NGOs, academia, and experts.

Following the presentation, MS asked how industries saw the need for clarity regarding licences for ITT, what was the level of alignment with the US, commented on licence exceptions for technology transfers and inquired whether any cloud services were being used by the RU in the invasion of Ukraine. SIPRI responded that clarity was very important for industry in their consultations with SIPRI, though some stakeholders are wary of EU guidelines. SPIRI noted the US instruments are more comprehensive, interlinked and flexible. On the EU level, there was some fragmentation between Dual Use Regulation and restricted measures. Closer guidance could be mindful to close this gap.

#### ***b) Tour-de-Table (Member States)***

Based on Presidency's guiding questions, DUWP held a tour-de-table discussion on Cloud services, Software-as-a-Service (SaaS) and Brokering services according to Article 2.2(d), 2.7, 2.8 and 6.

Majority of MS reported that they have not issued any specific guiding document on cloud services and dual-use items, except for some MS where such guidelines are incorporated in general guidelines for exports of dual use items. Two MS provide targeted guidelines on cloud services and have received very positive feedback from stakeholders who use them regularly. Some MS plan to introduce guidelines. Several MS stated that they would appreciate to have EU guidelines for these services.

Most of the MS who export software/technology reported that they requested the export licence before the software/technology was uploaded to a server located in a third country and before a person/partnership in a third country is given access (password to the server or the encryption key) to a server located within the Union. Several MS reported that they had limited experience with export of software and would always carefully assess the end-user and export on case by case basis.

Broad majority of MS has not issued any authorisation requirements or denials for brokering services that uses cloud services or SaaS, but if any case, most of them would treat them as an export operation.

MS concluded that more guidance from the Commission on export controls of cloud services, SaaS and brokering services would be appreciated.

## **5. Meetings of the Multilateral Export Control Regimes**

The Presidency updated on the outcome of the General Working group of the Wassenaar Arrangement meeting at end of May. Sweden delivered general EU statements in support of Ukraine and Cyprus and led MS and partners in two walkouts. Some issues were deferred to WA October meeting.

In light of the upcoming NSG plenary, it was requested for participating states to take up position on next steps regarding industry outreach as the NSG chair wishes for more EU MS contributions. DUWP was also updated that the MTCR has invited non MTCR EU MS to the technical outreach meeting in Oslo.

The Commission updated on the Australia Group plenary discussions in Paris. COM noted the discussion on reinforcing role of multilateral regimes, the number of countries participating, the role of adherence to AG, and unilateral commitment to align to controls agreed.

## **6. Cooperation with Third Countries**

### *a) Outcome of the 4th TTC Principals Meeting in Luleå*

The Commission outlined the main outcomes of the TTC Principals Meeting in Luleå that took place on 31 May. The Meeting was generally positive, noting stronger ambitions on market access and balanced by US's focus on trade security issues and economic coercion.

On export controls, TTC emphasised impact of stakeholder engagement. EU-US cooperation in economic measures against Russia and Belorussia has become more consistent through exchange of information and common work to address enforcement and circumvention. The statement points also to technical consultations on regulatory developments in the EU and US, coordinated updates for new controls adopted in regimes. Statement also recalls EU-US continued discussions on emerging technologies while addressing international security and human rights violation concerns.

COM updated on several follow-up actions, such as follow-up meetings with US experts on re-export, and dedicated stakeholder event in July. They noted that US partners will be invited to a debrief, date to be confirmed.

*b) Export control dialogues*

The Commission updated the DUWP on export control dialogues. It noted a request from China for an export control dialogue between EU and China at technical level. **DELETED**

The Commission informed on a Dialogue with Canada that will take place on 16 June, covering arms exports, Dual Use export controls, regulatory updates and public guidance on both sides. It will examine opportunities and challenges in multilateral regimes, including Wassenaar, and Russian related sanctions, including mutual information sharing. The Commission asked MS to flag inputs ahead of the meeting.

## **7. AOBs**

*I) Outcome of the Outbound Investment Screening Questionnaire*

The point is postponed to the next meeting. The Commission received responses from 13 MS and noted there was still time for remaining MS to share views and inputs.

*II) Preparations on the Communication on Economic Security Strategy*

The Commission informed about the upcoming Communication on Economic Security Strategy, which it is actively preparing for the adoption and publishing before end of June. It will propose a framework to develop a joint understanding with MS on the risks to collective economic security with gap analysis, identifying instruments to be mobilised. It will review existing instruments and look at the necessity of new ones. This will revolve around the concepts of “promote, protect, partner”, and discuss strengthening our export control tools and address challenges in current geopolitical situation.

MS noted the ambition of the Communication and expressed support, while drawing attention to the export awareness tool, as exports are an exclusive domain of MS and highlighted the distinction between economic security and export controls in terms of tools and aims.

### *III) Information from the incoming Spanish Presidency*

The incoming Spanish Presidency congratulated the SE team for their work and briefly noted the main topics and meeting dates under the Spanish Presidency: 25+26 July, September 13, October 1, November 7, December 12. ES noted the attendance of the US Delegation at the July meeting.

ES noted the main priorities, including ECM (a non paper to be discussed in July meeting), debate about emerging technologies, restricted measures, continuation of the discussion on sanctions and restricted measures, ITT and TTC. ES also noted discussion on economic and intelligence security, and FDI from Dual use perspective.

### *IV) Closing of the Swedish Presidency of the DUWP*

The Swedish Presidency thanked all MS for constructive work, noted the welcoming atmosphere and guidance from delegates and GSC, noting the success of the DUWP mandate being finalised.

## **8. Next DUWP meeting: 25 and 26 July 2023**