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MEETING DOCUMENT

From:	Presidency
To:	Working Party on Dual-Use Goods
Subject:	PRES compromise proposal - EUGEA 007

Due to a technical mistake, the text of PRES compromise proposal - EUGEA 007, published as WK 2695/20 INIT in PDF version, was incomplete (on page 2, Part 3, point 1.(2) was accidentally deleted).

WK 2695/20 INIT Word version is correct. This REV 1 concerns only PDF version.

Possible text on the basis of nothing is agreed until everything is agreed principle

PRES compromise proposals, based on the outcome of the

10th and 11th technical meeting with the EP

G. INTRA-GROUP EXPORT OF SOFTWARE AND TECHNOLOGY

UNION GENERAL EXPORT AUTHORISATION NO EU007

(referred to in Article 10(1)(d) of this Regulation)

Intra-group export of software and technology

Issuing authority: European Union

Part 1 – Items

This general export authorisation covers all technology and software specified in [...] Annex I to this Regulation, except those listed in Section I of this Annex and technology and software related to items under 4A005, 4D004, 4E001.c, 5A001.f and 5A001.j.

Part 2 – Destinations

This authorisation is valid throughout the customs territory of the Union for the export of software and technology to Argentina, Brazil, Chile, India, Indonesia, Israel, Jordan, Malaysia, Morocco, Mexico, Philippines, Singapore, South Africa, South Korea, Thailand, Tunisia and [Vietnam]

[A1][...].

Part 3 – Conditions and requirements for use

1. This authorisation authorises the export of software and technology listed in Part 1 by any exporter ~~resident or~~ established in a Member State of the Union to a ~~n~~ entity company wholly owned and controlled by the exporter (hereinafter "its subsidiary") or to a an entity company ~~who a~~ directly and wholly owned and controlled ~~subsidiary of~~ by the same parent entity company of as the exporter (hereafter - 'sister entity company'), provided that:

- (1) ~~In the case where the entity receiving the export is a subsidiary of the exporter, such subsidiary is wholly owned and controlled by the exporter,~~
- (2) ~~In the case where the entity receiving the export is a sister company of the exporter,~~
- (a) ~~both the exporter and the sister company receiving the export are directly controlled by the same parent company;~~
- (1) ~~the parent entity company company that controls directly and the entity entity person ultimately controlling the exporter are resident or established in a Member State of the Union or in a country covered by EU001, and~~
- (2) the parent company entity company that controls directly the exporter provides a binding ~~and enforceable~~ guarantee for the sister ~~company's entity's company's~~ compliance with the requirements of this authorisation. [...].

and

For the purpose of this Annex, a parent entity company ~~'parent company' is a person that controls another person entity company~~ when -it is capable of exercising decisive influence on it.[...]

- (3) the exported software and technology will be exclusively used ~~by such subsidiary or sister company and the exporter and their respective employees~~, for the commercial product development activities of the exporter and the subsidiary or sister company entity company respectively, and, in the case of employees, pursuant to the agreement establishing the employment relationship, and
- (4) the exported software and technology and any products resulting therefrom remain under the complete control of the exporter, or, for the purpose of fulfilling the requirements of this authorisation when the export is directed to a sister company company entity, under the complete control of the parent entity company company that controls directly the sister company company entity and will not be ~~shared shared re-exported to with with~~ any other person ~~third party~~, and
- (5) the exported software and technology will be returned to the exporter and completely deleted by the subsidiary or sister entity company company when the development activity has been completed or in the event that the subsidiary or sister entity company company is acquired by an other person ~~third party~~. Any resulting developed technology will also be transmitted to the exporter and completely deleted by the subsidiary or sister company entity company.

2. This authorisation does not authorise the export of software and technology where:
- (1) the exporter has been informed by the competent authority of the Member State in which he is ~~resident or~~ established that the software or technology in question is or may be intended, in its entirety or in part:
 - (a) 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;
 - (b) for a military, paramilitary, police, intelligence or surveillance end-use, or other security end-use by the government^[A2]; or
 - (c) for use as parts or components of military items listed in the national military list that have been exported from the territory of the Member State concerned without authorisation or in breach of an authorisation prescribed by the national legislation of that Member State;
 - (d) for use in connection with a violation of human rights, democratic principles or freedom of speech as defined by the Charter of Fundamental Rights of the European Union^[A3], ~~by using interception technologies and digital data transfer devices for monitoring mobile phones and text messages and targeted surveillance of Internet use (e.g. via Monitoring Centres and Lawful Interception Gateways);~~
 - (2) the exporter [...] is aware that the software **or** technology in question is intended, in its entirety or in part, for any of the uses referred to in subparagraph 1; or
 - (3) the exporter [...] is aware that the software or technology in question will be re-exported to any destination other than those listed in Part 2 of Section A of this Annex and the Member States.
 - (4) the exporter is aware that the consignee or end-user of the items in question is a military, paramilitary, police or intelligence service, or another governmental security service ~~for security~~, or that the items are intended for entities acting on behalf of any of the aforementioned services;

A Member State may adopt national legislation expanding the provisions of subparagraphs 2(2) and 2(3) above to cover circumstances where the exporter has grounds for suspecting that the software or technology in question are intended for the uses referred to in subparagraphs 2(2) or 2(3) above.

3. Any exporter intending to use this authorisation shall^[A4] implement an Internal Compliance Programme.

~~Pursuant to Article 22, Member States shall provide for effective, proportionate and dissuasive penalties applicable to the parent entity in case the exporter or the affiliated entity fail to comply with the requirements of this authorisation.~~

~~3. Any exporter intending to use this authorisation will implement an Internal Compliance Programme.~~

4. Exporters will declare that the items are being exported under Union general export authorisation EU007 in the customs declaration in the case of tangible export of software or technology.

5. Any exporter who uses this authorisation must notify the competent authority of the Member State where he is ~~resident or~~ established of the first use of this authorisation no later than 30 days prior to the date of the first export.

6. Any exporter who uses this authorisation must ~~reporting requirements attached to the use of this authorisation~~ to the competent authority of the Member State where he is ~~resident or~~ established on the use of this authorisation. The report on the use of this authorisation shall be produced at least once per year and shall include at least information regarding:

- (1) the description of the software and technology;
- (2) ~~[where available,]~~ the quantity and the value of the software and technology;
- (3) the subsidiaries, sister entities and parent entities involved under this authorisation.

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.

~~Where applicable, the requirements set out in this paragraph will be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.~~

~~[...]~~