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WORKING PAPER

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From: European Commission
To: Working Party on Dual-Use Goods

Subject: EU controls on non-listed items: draft compromise text proposal by the Commission

Delegations will find attached a draft compromise text on EU controls on non-listed items, as proposed by the Commission.

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Draft compromise text - EU controls on non-listed items (amendments to Regulation (EC) No 428/2009 are highlighted)

At the third trilogue on 13 February 2020, the Parliament and the Council mandated the Commission to prepare a compromise text for EU controls on non-listed items with a view to the next trilogue. Accordingly, the draft compromise text below provides a basis for the introduction of EU controls on non-listed dual-use items, including controls on exports of cyber-surveillance technologies on human rights grounds. This compromise text provides for targeted controls building on the decisions of national competent authorities while ensuring, through a systematic and clear consultation process, that the EU is equipped with a credible capacity to control exports of sensitive technologies so as to prevent any misuse by third countries and to protect our strategic interests. In effect, the compromise text develops the existing mechanism for end-use controls in Art. 4 of Regulation (EC) No 428/2009 and complements it with a “watch list” of technologies and/or entities of concern subject to consistent controls in the EU.

Article 2

[...]

Art 2.21 “Cyber-surveillance items” means dual-use items specially designed to enable the covert surveillance of information and telecommunication systems with a view to monitoring, extracting, collecting or analysing data;

Art. 2.24. “essentially identical transaction” means a transaction concerning items with essentially identical parameters or technical characteristics and to the same end user or consignee as another transaction;

Article 3

1. An authorisation shall be required for the export of the dual-use items listed in Annex I.
2. Pursuant to Article 4 or Article 8, an authorisation may also be required for the export to all or certain destinations [REDACTED] of certain dual-use items not listed in Annex I.

Article 4

1. An authorisation shall be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the competent authority that the items in question are or may be intended, in their 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;

[REDACTED]

2. If an exporter is aware that dual-use items which it proposes to export, not listed in Annex I, are intended, in their entirety or in part, for any of the uses referred to in paragraph 1, it must notify the competent authority, which shall decide whether or not to make the export concerned subject to authorisation.

3. A Member State may adopt or maintain national legislation imposing an authorisation requirement on the export of dual-use items not listed in Annex I if the exporter has grounds for suspecting that those items are or may be intended, in their entirety or in part, for any of the uses referred to in paragraph 1.

4. The Member State which imposes an authorisation requirement pursuant to paragraphs 1, 2 or 3 shall provide the other Member States and the Commission with all relevant information on the export in question, in particular as regards the items and entities concerned, unless it considers it not appropriate in light of the nature of the transaction or the sensitivity of the information concerned.

[REDACTED]

6. Where all Member States consider that an authorisation requirement should be imposed for essentially identical transactions, the Commission shall publish in the C series of the Official Journal of the European Union information communicated by the Member States regarding the items and/or entities subject to authorisation requirements.

[REDACTED]

8. The provisions of Article 15(1), (2) and (5) to (7) shall apply to denials concerning dual-use items not listed in Annex I.

