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From:	FI Delegation
To:	Working Party on Dual-Use Goods
Subject:	Finland - comments on Articles discussed during the Video Meeting of the DUWP on 6th May 2020

FINLAND COMMENTS ON 11 MAY 2020 ON THE RECENT PRESIDENCY DOCUMENTS IN THE DELEGATES PORTAL

KEY POINTS

Article 20(2).b

- The inclusion of the phrase “including information on the application of criteria set out in Art. 14.1” is problematic. While it is understandable that the criteria used to deny an export authorization should be identified when exchanging information about denials it is not clear what this means in the context of exchanging information about authorizations awarded. In such cases meaningful information cannot be provided in concise format suitable for exchanging data at the level of authorizations awarded. We suggest the deletion of this phrase or alternatively limiting its scope to denials (e.g. by adding “in cases where authorisations were not awarded” right after the sentence).

Article 24(2), 2nd paragraph

- FI sees the inclusion of the words “types of” as the clearly preferred option for the Council. While we favour transparency, omitting these words in a situation where it is clear that all member states cannot release detailed descriptions of items would lead to confusion and legal uncertainty to authorities as well as EU exporters.

Article 20(5)

- This paragraph limits the grounds on which information can be considered confidential to a limited number of cases which does not correspond to e.g. all the possible reasons based on which information can be considered as confidential under Finnish legislation. We would like to know whether it is legally possible to limit the scope of information considered confidential in this legislation to only these cases i.e. is such a limitation within the scope of EU trade policy competence.

ADDITIONAL OBSERVATION

EU 008/Part 2/b

- In other EU GEAs the expression concerning China + HK + MO is China (including Hong Kong and Macau) i.e. with parentheses. For consistency, this format should be used here, too.

Finland 11 May 2020 comments on the approach proposed by the Commission

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.

Note: These comments are based on the Commission oral confirmation at the DUWP that the new controls proposed in the PCY text in the autumn 2019 would be withdrawn (so there would not be double concessions from the Council) and the due diligence expectations would be withdrawn by the Commission. Furthermore, these comments are based on the expectation that there would not be surprises on these same issues in some other Articles or Recitals. Consequently, Finland could see this proposal as a way ahead if the amendments in this document are made and if the amended approach comprehensively solves the issues of cyber-surveillance technologies, EU autonomous list, EU autonomous approach, and human right catch-all, and if Council is not be surprised on these same issues in some other parts of the negotiations.

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 ~~or to certain natural or legal persons or partnerships~~ 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;

(b) for a military end-use ~~that may pose a threat to the maintainance or restoration of international peace and security~~ if the purchasing country or country of destination is subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe (OSCE) or an arms embargo imposed by a binding resolution of the Security Council of the United Nations; (Note: military end use definition, which should not expand the defintion in the current Regulation, is needed either after this text here or in Article 2)

(c) for the acquisition of these items by terrorists;

~~(d) with regard to cyber-surveillance items, where there is evidence that the end-use may be in connection with internal repression and/or the commission of serious violations of international human rights and international humanitarian law, for use by internal security forces for surveillance end use where the purchasing country or country of destination is subject to restrictive measures on human rights grounds imposed by the Council.~~

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 (a) or (b), 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.~~

Commented [A1]: No objection in principle, but the text could be adapted with Art 13(5) and 15(1) to take wording from those Articles.

~~5. The other Member States, if they are aware that they have essentially identical transactions, shall give due consideration to the information received pursuant to paragraph 4 and shall review it in light of the criteria considerations set out in paragraph 1 within 10 working days. In exceptional cases, any Member State may request the extension of the 10 day period. However, the extension may not exceed 30 working days. The other Member States may also inform the Commission that they consider that an authorisation requirement should be imposed in all Member States for essentially identical transactions.~~

Commented [A2]: As this is a voluntary measure, there should be no timelines

6. Where all Member States ~~consider~~ inform of their agreement 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 by the Member States.

9. All notifications required pursuant to this Article shall be made via secure electronic means including the system referred to in Article 20(3).

10. This Regulation is without prejudice to the right of Member States to take national measures under Article 10 of Regulation (EU) 2015/479.