Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items

The European Commission submitted its annual report to the European Parliament on the implementation of Regulation (EC) No 428/2009 (the so-called dual-use Regulation), as established by Article 23(3) of the Regulation. The report provides information on the implementation of the Regulation in 2015 and includes aggregated export control data for 2014. The report focuses on three main issues:

1) The evolution of the policy and the regulatory framework;
2) The activities of the Dual-Use Coordination Group;
3) Key-data on EU export controls.

1) Under the first issue, the Commission reports the following activities that contributed to the export control policy review:

- Launch of an impact assessment;¹
- Contracting of the Stockholm International Peace Research Institute (SIPRI) as external consultant to conduct a data collection project to support the impact assessment;
- Conducted online public consultation to collect stakeholders’ and public’s input regarding the review process;
- Conducted targeted consultations with key stakeholders;
- Consulted the Council’ Dual-Use Working Party;
- Release of an updated version of the “correlation table” linking customs codes with dual-use classifications.

The Commission reports how export control review issues were also on the agenda of the European Parliament, which during the considered period of time, created a joint DROIT-INTA Committee (on April 2015) focusing on the impact of intrusion and surveillance systems on human rights in third countries and organised a series of parliamentary questions. As for the amendments, the Commission reports that the Regulation, in the considered period of time, was amended once with Commission Delegated Regulation (EU) No 2420/2015 of 12 October 2015² updating Annex I of Regulation 428/2009, in order to introduce some updates decided in international export control regimes (mainly the Wassenaar Arrangement and the Missile Technology Control Regime). Annexes II and IV of Regulation 428/2009 were also updated accordingly.

As for the implementation of certain provisions of Regulation 428/2009 by Member States, the Report refers to the Information Note published in the Official Journal of the European Union of 13 February 2015.³

2) As for the Dual-Use Coordination Group (DUCG)⁴, the Commission reports a long list of activities, especially meetings to discuss crucial issues such as: the interpretation of the clause “specifically designed component”, the application of the definition of “exporter” also to “resellers”, the application of transit controls and the control of dual-use research.

The DUCG cooperated also with other groups/actors involved in the following activities:

- Monitoring of the joint technical sub-group examining the potential convergence of customs “Authorised Economic Operators” (AEO) programmes with export control “Internal Compliance Programme” (ICP);
- Monitoring of the “Surveillance technology expert group” (STEG) examining issues related to the control of cyber-surveillance technology and its potential impact on human rights and the security of the EU and its citizens;
- Cooperation with SIPRI and Ecorys in the “data collection project”;
- Technical consultations in support of the preparation of the Commission Delegated Regulation updating the EU control List;
- Preparations of EU guidelines supporting structured exchange of information and consultations between Member States with respect to the application of the “cryptography note”, and the definition of “exporter” as applied to “resellers”;
- Support to further development of the Dual-Use e-System (DUeS)⁵ especially through the creation of a new section to support exchange of information on denials issued under Regulation (EC) No 1236/2005 (the so-called Anti-Torture Regulation);
- A “DUCG-Industry Forum” was held on 7 December 2015 in Brussels to discuss review options and the findings of the online public consultation;
- Support to the preparation of an export control pilot simulation exercise (SimEX 2015) for customs and licensing officers, jointly organised by DG TAXUD and the Joint Research Centre (JRC), which, on its side continue with a series of seminars for licensing authorities in collaboration with the US Department of Energy;
- “EU P2P Outreach programme” on dual-use items in partner counties continued in 2015, in 34 countries.

3) As for key data, the Commission highlights how it is difficult to get reliable information on dual-use exports as there is no correspondingly defined economic sector. Moreover, not all Member States collect all data. Anyway, it is stressed that the dual-use export domain represents about 20% of EU total exports (including intra-EU trade). The dual-use category the most exported is category 1- Special materials and related equipment and the main country of destination (out of the EU) is the USA. In general terms, a large part of the dual-use export domain concerns exports towards “E001 countries” benefiting from general authorisations.

Authorised dual-use trade amounted to EUR 41.2 billion, representing 2.4% of total extra-EU exports, with a majority of transactions authorised under individual licenses (about 25.000 single licences issued in 2014). As for denials, only 472 denials issued in 2014, representing about 0.4% of total extra-EU exports.

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⁴ The Dual-Use Coordination Group (DUCG) was set up on the basis of Article 23 of Regulation 428/2009 and it brings together experts from the Commission and Member States to examine any issue concerning the application of export controls.

⁵ The Dual-Use e-System (DUeS) is an encrypted electronic system hosted by the Commission, to enable effective exchange of information between export control authorities and the Commission.