

Comparison between European Commission’s proposal and European Parliament’s amendments to the EU Dual-use Regulation RECAST

The draft of the European Parliament’s legislative resolution, contained in the Draft report of the Committee of International Trade¹ introduced 57 amendments² to the Commission’s proposal for a regulation of the European Parliament and of the Council setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast).³

The list of all single amendments introduced by the EP is annexed to this document. More generally, EP’s amendments can be divided into four main categories:

- 1) Scope of the Regulation
- 2) Licensing
- 3) Implementation
- 4) Public access and transparency

1) Scope of the Regulation		
	Commission	EP
<i>Ancillary services</i>	Exclusion of ancillary services	Includes of ancillary services
<i>Telecommunication interception equipment</i>	Category limited to mobile telecommunication interception equipment	Broadens the scope of the category, not limiting it to mobile
<i>Intrusion software</i>		Specifies the meaning of intrusion software, to stress that may cover both malicious as well as desirable defensive

¹ Draft report on the proposal for a regulation of the European Parliament and of the Council setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast) (COM(2016)0616 – C8-0393/2016 – 2016/0295(COD)), Committee on International Trade, Rapporteur: Klaus Buchner. Available on the European Parliament official website:

[http://www.emeeeting.europarl.europa.eu/committees/agenda/201705/INTA/INTA\(2017\)0503_1/sitt-4451689](http://www.emeeeting.europarl.europa.eu/committees/agenda/201705/INTA/INTA(2017)0503_1/sitt-4451689).

² *Amendment 13* starts the series of amendments made to articles of the Regulation.

Previous amendments modify some recitals of the Regulation, in line with amendments made to articles.

³ Proposal for a Regulation of the European Parliament and of the Council setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast), Brussels, 28.9.2016 COM(2016) 616 final 2016/0295 (COD). Available on:

http://trade.ec.europa.eu/doclib/docs/2016/september/tradoc_154976.pdf.

		purposes
<i>Data retention system</i>	Refers simply to “data retention system”	Limits the category to systems connected with interception systems
<i>Digital forensics</i>	Included in the scope as part of cyber-surveillance technology-related items	Excludes from the scope of the Regulation the “digital forensics”, since no clear definition yet
<i>Due diligence</i>	Not defined	Defined
<i>Catch-all clause</i>		<p>Broadens the possibility to adopt a catch-all clause if parts of components of military items could be used for the benefit of an illegal occupation or annexation under international law.</p> <p>Broadens the scope by eliminating the limitations of the respect of human rights only in cases of armed conflict or internal repression.⁴</p>
<i>Annexes</i>		<p>Amends Annex I, Section B, category 10 by adding:</p> <ul style="list-style-type: none"> - marketing - network protection, such as firewalls - intrusion software <p>Amends Annex II as follows:</p> <ul style="list-style-type: none"> - elimination of category G (low value shipments) - amendments to category H aiming at extending authorisations for use both by the exporter and companies superordinate the exporter, such as parent or holding company.

⁴ In other words, the violations of human rights or international humanitarian law become reasons to control non-listed items, even outside the framework of armed conflict or internal repression.

2) Licensing		
	Commission	EP
<i>Authorisations validity period</i>	<p>Limits the validity period for authorisations for the export of non-listed items to 1 year.</p> <p>Limits the validity period for individual and global licenses to 1 year.</p>	<p>Extends the validity period for authorisations for the export of non-listed items to 2 years</p> <p>Extends the validity period for individual licenses to 2 years and 5 years for global licenses.</p>
<i>Conditions for granting (assessment criteria)</i>		<p>Adds five supplementary criteria to consider before granting authorisations:</p> <ul style="list-style-type: none"> - behaviour of the country of destination (attitude to terrorism, its alliances and respect of international law); - compatibility of exports (technical and economic capacity of the recipient country); - whether items exported are illegal in the country of destination or if the country has no legal framework compliant with international human rights law; - whether the item is intended for benefitting of an illegal occupation or annexation under international law; - whether there is evidence of human rights violations or serious violations of humanitarian law.

<i>Objection period</i>	Objection period ⁵ of 30 working days . ⁶ Objection coming from any consulted Member State .	Reduces the objection period to a maximum of 20 working days . Increase the number of Member States' objections to revoke an authorisation requirement for items not listed in Annex I, to at least half of the Member States Introduces the respect of the Member States' human rights obligations as criterion to keep the authorisation requirement, despite the objections.
<i>Large project authorisation (LPA)</i>	Proposal to create a LPA	No LPA as a tool to facilitate the export of nuclear power plants (proliferation and security risks)
<i>EU GEA</i>	For certain exports as set out in Sections A to J of Annex II .	Eliminates EU GEA for Section G of Annex II –low value shipments (because the category is erased from the Annex).
<i>End-user statement</i>	Might be requested , if appropriate.	Mandatory for individual export authorisations

3) Implementation

	Commission	EP
<i>Guidance with EEAS assistance</i>	Commission and Council make available guidance and/or recommendations to ensure common risks assessment.	Introduces the cooperation with the EEAS to make available guidance to ensure common risk assessments by the competent authorities of Member States and establishes the availability of comprehensive guidance

⁵ Period of time during which Member States can react against an authorisation requirement for items not listed in Annex I.

⁶ The objection period concerns the authorisation requirement for dual-use items not listed in Annex I (possibility to impose a catch-all clause, for reasons listed in paragraphs 1, 2 and 3 of article 4).

		at the point of the entry into force of the Regulation.
<i>Delist of items</i>	Not mentioned	Introduces the possibility to delist items of Annex I, Section B.
<i>Technical working group</i>	Not mentioned	Establish the creation of a technical working group within the Dual-use Working Group to assess the respect of the human rights dimension.
<i>Convergence of penalties</i>	Not mentioned	Promotes a convergence of applicable penalties among Member States

4) Public access and transparency		
	Commission	EP
<i>Reports</i>	Public report submitted by the Commission to the European Parliament on the implementation and enforcement of controls and on the activities of the Dual-Use Coordination Group	Public report + public disclosure by Member States of information on the volume, value, nature of equipment, destination of dual-use items, information on approved and denied exports. Public availability of the human rights risk assessments undertaken by authorities and companies.
<i>Exchange of information</i>	Exchange of information with third countries where appropriate.	Exchange of information with third countries and relevant international organisations (such as OECD) on developments falling in the scope of Section B, Annex I and annual report by the Commission to the European Parliament on these developments.

List of amendments introduced by the European Parliament to the Commission's proposal

Amendments to Articles

Article 2 – paragraph 1 – point 6 – subparagraph 2
EP: deleted the exclusion of ancillary services

Article 2 – paragraph 1 – point 13
EP deleted the inclusion of “large project authorisation”
(The category of “large projects” is first and foremost a tool to facilitate the export of nuclear power plants. Nuclear energy is by definition a dual use technology with considerable proliferation and security risks. This Regulation should therefore not facilitate its export.)

Article 2 – paragraph 1 – point 21 – introductory part
Clarification that cyber-surveillance technology may be present in the form of tangible as well as intangible goods.

Article 2 – paragraph 1 – point 21 – point a
Broadens the scope of the category of telecommunication interception equipment (limited to mobile)

Article 2 – paragraph 1 – point 21 – point b
Specifies the meaning of intrusion software, to stress that may cover both malicious as well as desirable defensive purposes

Article 2 – paragraph 1 – point 21 – point d
Limits the category of “Data retention systems” to systems connected with interception systems, since the term “Data retention systems”, without any limit, covers almost every database.

Article 2 – paragraph 1 – point 21 – point e
Excludes from the scope of the Regulation the “digital forensics” as long as a clear and effective distinction between an offensive and defensive usage of digital forensics is not available yet.

Article 2 – paragraph 1 – point 22 a (new)
Inserts the definition of “due diligence” since linked to article 4(2) – catch-all clause for exporters.

Article 4 – paragraph 1 – introductory part
Modifies the wording as to include the “awareness dimension” in the catch-all clause for exporters.

Article 4 – paragraph 1 – point a
Adds “unmanned aerial vehicles” for internal consistency of the text of the Regulation, since

these items are listed in Section A of Annex I.

Article 4 – paragraph 1 – point c

Modifies the wording as to be more inclusive and inserts the respect of international human rights law as legal framework to consider when assessing the country of destination

Article 4 – paragraph 1 – point c a (new)

Inserts the possibility of catch-all clause also in case there is a risk that items might be used for the benefit of an illegal occupation or annexation under international law.

Article 4 – paragraph 1 – point d

Eliminates the limitations of the respect of human rights in cases of armed conflict or internal repression.

Article 4 – paragraph 2

Modifies the wording as to include the “suspicion dimension” in the catch-all clause for exporters.

Article 4 – paragraph 3

Extends the validity period for authorisations for the export of non-listed items to 2 years, in order to align with the medium validity period in the EU.

Article 4 – paragraph 4 – subparagraph 1

Reduces the objection period (for Member States to react against an authorisation requirement for items not listed in Annex I) to a maximum of 20 working days

Article 4 – paragraph 4 – subparagraph 3

Increase the number of Member States’ objections to revoke an authorisation requirement for items not listed in Annex I, to at least half of the Member States (instead of objections coming from any consulted Member State – in other terms, Member States’ veto power is eliminated). It also introduces the respect of the Member States’ human rights obligations as criterion to keep the authorisation requirement, despite the objections.

Article 4 – paragraph 4 – subparagraph 4

Adds the public access to the register of authorisation requirements to be kept by the Commission and Member States.

Article 5 – paragraph 1

Modify the wording as to insert the awareness and suspicion dimension in the catch-all clause for brokering activities

Article 5 – paragraph 2

Idem as above

Article 7 – paragraph 2

Modify the wording as to insert the awareness and suspicion dimensions in the catch-all clause for suppliers of technical assistance.

Article 10 – paragraph 1 – subparagraph 1 – point b

Eliminates the global export authorisation for large projects.

Article 10 – paragraph 1 – subparagraph 1 – point d

Eliminates the possibility to have EU GEA for Section G of Annex II (this category G “low shipment value” is eliminated in Annex II)

Article 10 – paragraph 3

Modifies the validity period of authorisations: two years for individual licenses (instead of one) and five years for global licenses (instead of one). It also specifies the possibility for competent authorities to revoke, at any time granted licenses.

Article 10 – paragraph 4 – subparagraph 2

Modifies the wording as to make the end-user statement mandatory for individual export authorisations.

Article 10 – paragraph 6 – point c

Modifies the wording as to insert the awareness and suspicion dimensions in the framework of reasons for not granting national general export authorisations.

Article 11 – paragraph 1 – subparagraph 2

Adds reference to subsidiaries and joint ventures when defining the scope of supply of brokering and technical assistance.

Article 14 – paragraph 1 – point d a (new)

Adds a criterion to consider when granting authorisations: behaviour of the country of destination with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law.

Article 14 – paragraph 1 – point d b (new)

Adds a criterion to consider when granting authorisations: compatibility of the exports of the military technology or equipment with regard to the technical and economic capacity of the recipient country.

Article 14 – paragraph 1 – point d c (new)

Adds a criterion to consider when granting authorisations: whether the use of the item either in the exporting country or in the country of destination is illegal or where the country of destination has no legal framework which is compliant with international human rights law.

Article 14 – paragraph 1 – point d d (new)

Adds a criterion to consider when granting authorisations: whether the item in question is intended for benefitting of an illegal occupation or annexation under international law.

Article 14 – paragraph 1 a (new)

Adds the requirement for Member State to not grant any authorisations (or imposes the revocation if already granted) where there is evidence of human rights violations or serious violations of humanitarian law.

Article 14 – paragraph 2

Introduces the cooperation with the EEAS to make available guidance to ensure common risk assessments by the competent authorities of Member States and establishes the availability of comprehensive guidance at the point of the entry into force of the Regulation.

Article 16 – paragraph 2 – point b

Adds the possibility to delist items of Section B of Annex I, by virtue of their dynamic nature.

Article 21 – paragraph 3

Modifies the wording of the article to as explicitly mention the participation of civil society organisations, acknowledging their role of monitoring the human rights situation in third countries.

Article 21 – paragraph 3 a (new)

Establishes the creation of a technical working group within the Dual-use Working Group, in order to assess the respect of the human rights dimensions.

Article 22 – paragraph 2

Promotes a convergence of applicable penalties among Member States.

Article 24 – paragraph 2

Introduces the public availability of Member States' reports on the volume, value, nature of equipment, and destination of their trade in dual-use items, as well as information regarding approved or denied exports. It also establishes the public availability of human rights risk assessments undertaken by authorities and companies regarding authorised or denied export licenses.

Article 27 – paragraph 1

Establishes the requirement for the Commission and Member States to maintain regular and reciprocal exchange of information, not only with third countries, but also with relevant international organisations, such as the OECD, in particular with regard to developments falling in the scope of Section B of Annex I. It also establishes the requirement for the Commission to report annually to the European Parliament on such activities.

Amendments to Annexes

Amendments are made to Annex I, Section B, category 10, notably by introducing:

- Marketing
- Network protection, such as firewalls
- Intrusion software

Amendments are made to Annex II:

- Elimination of category G: low value shipments;
- Amendments to category H aiming at extending authorisations for use both by the exporter and companies superordinate to the exporter, such as parent or holding company.