

Brussels, 8 March 2017

Orgalime comments on the European Commission proposal on dual-use items – let's keep export controls true to their aim!

Orgalime welcomes the possibility to provide comments on the European Commission's proposal for a Regulation setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items [COM \(2016\) 616](#), amending Regulation 428/2009.

The aim of the export control regime is to restrict the proliferation of arms of mass destruction and to safeguard national security and the proposed changes should remain true to this aim. In this regard, Orgalime sees a need for improvement of the proposal and would like to provide the following comments:

Widening the security concept to include human rights

Our companies are highly committed to the protection of human rights and are already following due diligence in this regard. Nonetheless, we question the opportunity of using the dual use Regulation, whose purpose is to protect national security and to prevent the proliferation of arms of mass destruction, as the best tool to protect human rights. The inclusion of the so-called "human security" dimension, which remains quite vague, in the Regulation is questionable at best. Human rights violations need to be dealt with at international level or with specific regulations at European level. Also, the important aim of the fight against antiterrorism should be treated separately from the one against the proliferation of arms of mass destruction.

Undue reinforcement of the catch all clause

We also do not see a need to reinforce the catch-all clause, especially when it comes to serious violations of human rights or to use it in connection with acts of terrorism. The clause should apply only to prevent the proliferation of weapons of mass destruction or for military purpose, with an application on a case by case basis. Orgalime has doubts on whether extending the catch-all is the correct tool to address the underlying problem, namely human right violations in third countries.

Moreover, this addition, which is specific to the EU, will also give a competitive disadvantage to European companies, for instance in comparison to our American counterparts.

The current proposal for the catch-all clause lacks clear and legally sound language leaving much room for interpretation. Vague terms such as '**serious** violations of human rights', '**relevant** public international institutions' or '**in connection with** acts of terrorism' should be adapted or clearly

Orgalime, the European Engineering Industries Association, speaks for 40 trade federations representing the mechanical, electrical, electronic, metalworking & metal articles industries of 24 European countries. The industry employs some 10.9 million people in the EU and in 2015 accounted for more than €1,900 billion of annual output. The industry accounts for over a quarter of manufacturing output and a third of the manufactured exports of the European Union.

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defined within the text of the draft Regulation¹. Orgalime therefore thinks that the proposed text is in clear contradiction with the objective of streamlining the application of the Regulation in general and the catch-all clause in particular.

The new proposal entails that all EU Member States have to accept national authorisation requirements by all individual Member States² and are obliged to impose authorisation requirements in similar cases³. This is an extremity burdensome system especially for SMEs and will lead to less legal certainty for companies while increasing the red tape and delaying the entire process. Orgalime maintains that this proposal is disproportionate to achieve the sole aim of avoiding circumvention and will without doubt undermine European companies' ability to compete on international markets on a level playing field and therefore the Commission's jobs and growth agenda.

Cyber-surveillance technologies – a mean to ensure national security

The addition of cyber-surveillance technologies⁴ to the Regulation unduly enlarges its scope. General rules on cyber-surveillance are counterproductive and will stifle innovation as changes in the sector, in which our companies are leader, are very fast. Our companies should remain free to sell cyber-surveillance technologies, such as, intrusion software for antiterrorism purposes, biometric equipment to protect sensitive websites and marking off technology as this helps protect national security. Indeed, the main aim of the Regulation should remain to protect national security. Controls could be limited to specific applications that are seriously creating issues or to certain countries using this equipment to crack down on internal political dissent.

The EU should not unilaterally enlarge the scope of export controls. Technologies and items that are subject to export controls should be in line with the relevant international regimes (for example Wassenaar) if the EU does not want to once again undermine the competitiveness of its industry.

Authorisation for large projects and intra-company technology transfers – a positive step

Orgalime welcomes the fact that global export authorisation for large projects will be valid for the entire duration of the projects⁵.

We also welcome the introduction of new General Authorisation (EUGEA) on Encryption, Low Value Shipments, Intra-company transmission of software and technology⁶ and for other dual-use items such as frequency changers. We would encourage having more general authorisations and considering doing away with the reporting requirements that are costly and undermine the trust in companies, which underpins the concept of general authorisations.

In particular, Orgalime welcomes the Commission's proposal to establish a General Export Authorisation (GEA) for Intra-Company Technology Transfers (ITT), which would facilitate secure exports among a parent company and its subsidiaries. For internationally active companies the ability to innovate and offer market-leading solutions and products is closely linked to the free flow of information and technology within the companies. To date, these transactions may need multiple export licences from different export authorities for company internal operations. This can negatively impact transactions and hinder fast product development in order to be first to market which is crucial to the competitiveness of European companies.

¹ Other Regulations already exist at European level to effectively fight against terrorism (see, for instance, Regulation 881/2002 in the framework of the EU foreign policy instruments).

² See article 4 paragraph 4 (1)

³ See article 4 paragraph 4 (2)

⁴ Cyber surveillance technologies are defined in article 2.1b as technology which can be used for the commission of serious violations of human rights or international humanitarian law, or can pose a threat to international security or the essential security interests of the Union and its Member States.

⁵ See article 10.3

⁶ EU 007, EU 008, EU 009 and EU 010

Enhanced cooperation with the private sector

Orgalime would like to see a reinforced partnership with the private sector in the management of the export control regime. This can happen in the framework of the coordination group of the dual uses⁷, as member states can consult exporters. In this regard, it is essential that industry stakeholders are informed and consulted in a timely manner.

Reduction in the time to update the lists

Orgalime welcomes the reduction in time to update the lists thought the European Commission's delegated act foreseen in article 16. In any case, the delegated act should not lead the European Commission to enlarge the scope of the Regulation, as stated in article 16 (serious violations of human rights or international humanitarian law or essential security interests of the Union and its Member States) – the Regulation should remain in line with the Wassenaar Arrangement.

Period of validity of authorisations

The period of validity of one year⁸ of the recast is not in line with Business to Business cycle and product development, generally around two years⁹. Exporters will then have to request an extension of their licence, which is purely administrative and time-consuming for both parties (exporters and competent authorities in charge of delivering the license). Such an approach is hardly in lines with the Commission's stated Better Regulation approach.

Extraterritorial application of brokering restrictions and post-shipment controls

The Commission proposal provides for an application of brokering restrictions also to non-EU companies, in case they are controlled by an EU company or an EU person¹⁰. Orgalime does not support the proposed changes, because the proposed extra-territorial effects of export controls are at odds with international law. Indeed, respecting the political sovereignty of other countries is a fundamental requirement for sustainable and successful international trading by European based companies.

Post-shipment controls and end-user verifications¹¹ will bring little added value while resulting in a disproportionate increased expense for our industries.

Conclusions

Orgalime is committed to protection of human rights but the dual uses regulation is not the best tool to address this need. The addition of cyber-surveillance technology to the export control regulation will stifle innovation while impeding to ensure national security, which should remain the aim of the Regulation. On the other hand, we welcome the introduction on new General Authorisation (EUGEA), especially for Intra-Company Technology Transfers.

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⁷ See article 21

⁸ See article 10.3

⁹ Or longer if feasible

¹⁰ See *considerandum* number 20 and article 11 paragraph 2

¹¹ See article 27 paragraph 2, subparagraph b and c