

FOLLOW UP of the comparison between European Commission’s proposal and European Parliament’s amendments to the EU Dual-use Regulation RECAST

Following the draft report containing amendments proposed by the European Parliament’s Committee on International Trade – INTA (rapporteur MEP Klaus Buchner) to the EU dual-use Regulation Recast,¹ the EP’s Committee on Foreign Affairs – AFET (rapporteur MEP Marietje Schaake) delivered its own draft opinion.²

The list of single amendments introduced by the EP’s Committee on Foreign Affairs is annexed to this document, as well as short comments on differences between the INTA amendments and the AFET amendments, on the same provisions, when it is the case.

The AFET draft opinion includes 26 amendments in total (8 to recital and 18 to articles) and it is less comprehensive, in terms of issues approached, than the INTA draft report.

Most of the AFET amendments, in fact, concern the **link between human rights and cyber-surveillance technology**.

Other amendments concern provisions already modified in the INTA draft report, although the content of the amendments, also for the same provisions, is not always the same.

Shared issues, by both Committees are:

- Objection modalities
- Possibility to add/delist items
- Guidance on common risk assessment
- Exchange of information
- Member States’ penalties

The following tables compare the Commission’s proposal to the AFET amendments and, in case of overlapping issues, also with the INTA amendments. Concerned amendments are divided by the analytical categories: Scope of the Regulation, Licensing, Implementation, Public access and transparency.

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

² Draft opinion of the Committee on Foreign Affairs for the Committee on International Trade on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace (Rapporteur: Marietje Schaake), (COM(2016)0447 – C8-0264/2016 – 2016/0207(COD)). Available on: [http://www.emeeting.europarl.europa.eu/committees/agenda/201705/AFET/AFET\(2017\)0502_1/sitt-4448349](http://www.emeeting.europarl.europa.eu/committees/agenda/201705/AFET/AFET(2017)0502_1/sitt-4448349).

1) Scope of the Regulation			
	Commission	AFET	INTA
<i>Human rights and cyber-surveillance technology</i>	/	<ul style="list-style-type: none"> - Specifies which human rights are often violated by means of cyber-surveillance technology; - Specifies the definition of “cyber-surveillance technology” by adding the dimension of non authorisation/awareness on the side of the owner or administrator of the system; - Eliminates the adjective “serious” as referred to violations of human rights, explaining that human rights violations committed with dual-use items often will not qualify as serious human rights violations. It also clarifies the bodies that should assess the respect of human rights. 	<ul style="list-style-type: none"> - Clarifies the distinction between tangible and non tangible cyber-surveillance technology; - Broadens the scope by eliminating the limitations of the respect of human rights only in cases of armed conflict or internal repression.
<i>End-user</i>	/	Introduces the definition of end-user and specifies the fact that the end-user shall be the actual final recipient and user of the item.	/
<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 not covered by the control list.	Excludes from the scope of the Regulation the “digital forensics”, since no clear definition yet

Catch-all clause		<ul style="list-style-type: none"> - Broadens the scope by eliminating the term ‘serious’ as referred to violations of human rights (making it easier to implement catch-all clause for risks of violation of human rights); - Insert the possibility for the Commission to add to list items covered by a catch-all clause implemented by a Member State and which received no objection from other Member States. 	Broadens the scope by eliminating the limitations of the respect of human rights only in cases of armed conflict or internal repression
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2) Licensing			
	Commission	AFET	INTA
End-user statement	Authorisations subject to end-user statement if appropriate	Adds the requirement of an end-user statement for authorisations for cyber-surveillance technology and the same requirement (end-user statement) for other items, if appropriate.	Mandatory for individual export authorisations
Objection period³	Objection period of 30 working days . 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

³ Period of time during which Member States can react against an authorisation requirement for items not listed in Annex I.

		not listed in Annex I, to at least 4 Member States and representing at least 35% of the Union population.	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.
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3) Implementation			
	Commission	AFET	INTA
<i>Guidance on common risks assessment</i>	Commission and Council make available guidance and/or recommendations to ensure common risks assessment.	Adds the requirement for the Council to make available guidance and/or recommendations to ensure common risk assessments by the competent authorities of the Member States at the moment of entry into force of the Regulation.	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.
<i>Amendment of Section B of Annex I</i>	Only if necessary due to risks of serious violations of human rights or international humanitarian law or the essential security interests of the Union and its Member States (= no “rapid” procedure).	Introduces the possibility to modify Section B of Annex I, on the ground of urgency, by using the procedure laid down in Article 17 (adoption of delegated acts).	Introduces the possibility to delist items of Annex I, Section B.
<i>Record-keeping period</i>	3 years	5 years	/

4) Public access and transparency			
	Commission	AFET	INTA
<i>Exchange of information</i>	Exchange of information with third countries where appropriate.	Adds the term “ all ” referred to information to provide in the framework of: <ul style="list-style-type: none"> - exchange of information between the Commission and Member States; - information regarding the enforcement of controls; - data on sensitive end-user. 	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.
<i>Report</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	Member States to make publicly available, every month, an easily searchable digital overview of licensing data based on common fields including: date, type of license, product category, product description, end-use, destination country, end-user, value, volume and granted/denied	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.

List of amendments proposed by the EP Committee on Foreign Affairs (AFET) to the Commission’s proposal and differences with amendments introduced by the EP Committee on International Trade (INTA)

Article 2 – paragraph 1 – point 1 – point b

AFET: Specifies which human rights are often violated using cyber-surveillance technology.

Article 2 – paragraph 1 – point 5 a (new)

AFET: Adds point 5a to define “end-user”, specifying that the end-user shall be the actual final recipient and user of the item.

Article 2 – paragraph 1 – point 21 – introductory part

AFET: Specifies the definition of “cyber-surveillance technology” by adding the dimension of non authorisation/awareness on the side of the owner or administrator of the system.

N.B. Provision modified also by the EP Committee on International Trade (INTA) but to clarify the distinction between tangible and non tangible cyber-surveillance technology.

Article 2 – paragraph 1 – point 21 – point e

AFET: Excludes from the scope of the Regulation the “digital forensics” since not covered by the control list.

N.B. Provision modified also by the INT, but exclusion from the scope of the Regulation by reasons of non clear distinction between offensive and defensive.

Article 4 – paragraph 1 – point d

AFET: Eliminates the adjective “serious” as referred to violations of human rights, explaining that human rights violations committed with dual-use items often will not qualify as serious human rights violations (= broadens the scope of the Regulation). It also clarifies the assessment of human rights violations, for a matter of legal certainty (competent bodies of the UN, the Council of Europe, the Union or national competent authorities).

N.B. Provision modified also by the INTA but only to not limiting the respect of human rights in cases of armed conflict or internal repression.

Article 4 – paragraph 1 – point e

AFET: Clarifies, in legal terms, the meaning of “for use in connection with acts of terrorism”, by adding the definition laid down in Common Position 2001/931/CFSP (cited in the text).

Article 4 – paragraph 4 – subparagraph 2

AFET: Inserts the possibility for the Commission to add to list items covered by a catch-all clause implemented by a Member State and which received no objection from other Member States.

Article 4 – paragraph 4 – subparagraph 3

AFET: Increases the number of Member States required to object an authorisation requirement (from any member State to at least four Member States representing at least 35% of the population of the Union). It also adds the respect of international human rights law or international humanitarian law as criterion to keep the authorisation requirement, despite the objections.

N.B. Provision also modified by the INTA, but requiring at least half of Member States and no population criterion. No differences as regard the possibility for Member State to require

the authorisation, for reasons of human rights violations and despite objection(s).

Article 10 – paragraph 4 – subparagraph 1

AFET: Adds the necessity to specify, in case of governmental end-user, the sub-entity, department, agency or unit concerned.

Article 10 – paragraph 4 – subparagraph 2

AFET: Adds the requirement of an end-user statement for authorisations for cyber-surveillance technology and the same requirement (end-user statement) for other items, if appropriate.

N.B. Provision also modified by the INTA, but modifying the wording as to make the end-user statement mandatory for individual export authorisations.

Article 14 – paragraph 2

AFET: Adds the requirement for the Council to make available guidance and/or recommendations to ensure common risk assessments by the competent authorities of the Member States at the moment of entry into force of the Regulation.

N.B. Provision also modified by the INTA on the need to make publicly available the guidance at the entry into force of the Regulation, but the INTA added the cooperation with the EEAS.

Article 16 – paragraph 2 – point b

AFET: Introduces the possibility to modify Section B of Annex I, on the ground of urgency, by using the procedure laid down in Article 17 (adoption of delegated acts).

N.B. Provision also modified by the INTA, by specifying the possibility to delist items, but not specifying the procedure laid down in article 17.

Article 20 – paragraph 2 – point a

AFET: Adds the term “all” referred to information to provide in the framework of exchange of information between the Commission and Member States.

Article 20 – paragraph 2 – point b

AFET: Idem for information regarding the enforcement of controls.

Article 20 – paragraph 2 – point c

AFET: Idem for (all) data on sensitive end-user.

Article 22 – paragraph 1 a (new)

AFET: Inserts a new point allowing the Commission to assess whether rules on penalties laid down by Member States are of a similar nature and effect.

Article 24 – paragraph 1 a (new)

AFET: Inserts a new point asking Member States to make publicly available, every month, an easily searchable digital overview of licensing data based on common fields including: date, type of license, product category, product description, end-use, destination country, end-user, value, volume and granted/denied.

Article 25 – paragraph 3

AFET: extends the record-keeping requirement period to five years (instead of 3 years, as in the Commission’s proposal).