

# Opinion of the Committee on Foreign Affairs

## 2011/12:UU6

### Green Paper on the dual-use export control system

#### Summary

In this Opinion, the Committee comments on the Commission Green Paper on the dual-use export control system of the European Union: ensuring security and competitiveness in a changing world, COM (2011) 393, the aim of which is to launch a broad public debate concerning the functioning of the current EU dual-use export control system. The Green Paper has three main sections:

- the broader context of export controls
- details of the current EU dual-use export control system
- direction of evolution of the EU dual-use export control framework.

The Green Paper deals exclusively with export controls on dual-use items. EU sanctions and exports of military equipment have been explicitly excluded. The results of the consultation will help identify the strengths and weaknesses of the current EU system and map out a longer-term vision of the EU export control framework for dual-use items.

The Committee welcomes the Commission's launching a broad debate on the EU's dual-use export control system. It also welcomes, in line with the Government, proposals to step up harmonisation between the Member States, not least as far as the interpretation of the criteria in Regulation (EC) No 428/2009, including its Annexes, is concerned. Given that the trade in controlled goods can have an influence on national foreign and security policy, the Committee takes the view that the process of authorising the export of dual-use items will continue to be carried out by the licensing authority of the Member State in question.

The report contains three specific opinions.

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# The Committee's proposal for a Parliament decision

## Dual-use export control system

Parliament presents the opinion for discussion

Stockholm, 18 October 2011

For the Committee on Foreign Affairs

*Karin Enström*

The following members contributed to the decision: Karin Enström (Moderate Party), Urban Ahlin (Social Democratic Party), Walburga Habsburg Douglas (Moderate Party), Carina Hägg (Social Democratic Party), Christian Holm (Moderate Party), Fredrik Malm (Liberal Party), Olle Thorell (Social Democratic Party), Kerstin Lundgren (Centre Party), Bodil Ceballos (Green Party), Julia Kronlid (Sweden Democrats), Hans Linde (Left Party), Ulrik Nilsson (Moderate Party), Désirée Liljevall (Social Democratic Party), Ismail Kamil (Liberal Party) and Robert Halef (Christian Democrats).

# Report on the matter

## The matter in question

The European Commission Green Paper on the dual-use export control system of the European Union: ensuring security and competitiveness in a changing world is dated 30 June 2011. It was submitted to Parliament on 30 June 2011 and referred to the Committee on Foreign Affairs for examination on 1 July 2011.

On 4 October, Parliament received a memorandum on the Green Paper (2011/12:FPM4). In the memorandum the Government welcomes proposals to step up harmonisation between the Member States in this area. The consultation launched by the Green Paper ends on 31 October 2011, and the Commission is expected to report on the results of the Green Paper in January 2012. Proposals for amendments to the Dual-use Regulation are expected from the Commission in 2013 or 2014.

## Background

Controlling the export of dual-use items, that is items which can be used for both civilian and military purposes, is at the forefront of international non-proliferation efforts. Guided by security objectives, dual-use export controls are implemented through trade measures taking the form of authorisation requirements for the export of dual-use items to third countries. The high-tech nature of such goods and technologies, and the considerable volume of trade in them, means that the dual-use sector is a crucial element of the EU's drive towards innovation and competitiveness. The EU has an extensive dual-use industry, with some 5 000 companies engaged in the export of controlled dual-use items. These industries cover many different sectors, including nuclear power, biology, chemistry, material-processing equipment, electronics, computers, telecommunications, lasers and navigation.

In 2006, the Commission drew up a proposal to amend the Regulation governing controls on dual-use items. In May of 2009, the Member States agreed to this proposal and adopted Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. This Regulation entered into force on 27 August 2009. According to Article 25 thereof, the Commission should prepare a report on the implementation of the EU's export control system and possible areas for reform. The Commission's aim with the Green Paper was to launch a consultation with civil society, NGOs, industry, academia and Member State Governments on how the EU's existing dual-use export control system is working. The results of the consultation will help to identify the strengths and weaknesses of the current system and map out a longer-term vision for the EU's export control system.

Dual-use export controls are the EU's exclusive competence and an integral part of its common commercial policy. This exclusive competence excludes the competence of the Member States in this area save where the Union grants them specific authorisation pursuant to Article 2(1) of the Treaty on the Functioning of the European Union. Such authorisation was granted to the Member States by, for example, Regulation (EC) No 428/2009, which forms the framework for the EU's dual-use export control system. The practical implementation of the Regulation is, however, mainly up to the Member States. Four types of authorisation are currently available under the Regulation, of which the EU's general authorisation is issued by the Commission and the other three types are issued by the Member States (individual, global and national general export authorisations). How these national authorisations are granted varies between Member States. For example, there are just seven Member States that have made national general export authorisations available to their exporters. The Regulation also gives the Member States the possibility of introducing further national measures. Article 12 of the Regulation outlines the general criteria to be used in deciding whether or not to grant individual or global export authorisations. According to Article 4, Member States are also entitled, under certain circumstances, to require authorisations for the export of items not included on the EU's control list.

Swedish legislation (Act (2000:1064) on control of dual-use items [*Lag om kontroll av produkter med dubbla användningsområden*]) supplements Regulation (EC) No 428/2009 by setting out penalties for infringements of the Regulation.

## Main components of the Green Paper

In the Green Paper, the Commission highlights differences in the national dual-use export control systems, taking the view that there is no harmonised EU strategy for export control in this area. The Dual-use Regulation is deemed to provide a general framework for dual-use export control activities, but the practical implementation of this has been left almost entirely to the Member States. This means that the EU has a series of different approaches to export controls, with different levels of restrictions being applied in the different Member States. Exports of a particular item from a Member State may be significantly delayed or even prohibited, whilst exports of the same item from another Member State may be completed without any problems. According to the Green Paper, EU companies are forced to devote time and resources to complying with different and sometimes contradictory rules in the Member States. Furthermore, pursuant to Regulation (EC) No 428/2009 authorisations are required for the transfer of certain items with the Community. The Commission claims that the existing system is not in line with the principles of the EU's internal market and that it impairs the EU's competitiveness in the global market.

The Commission points out that technological progress and advances in education mean that many sensitive items can now be manufactured in more countries than was previously the case, which may contribute to increased global supply. Furthermore, several supplier countries outside the EU have embarked on reforms designed to enhance the competitiveness of their industries and their exports.

The Commission considers that technical development and the increasing number of transactions are putting a constantly growing burden on the authorities responsible for export control, whose resources are already stretched. It therefore takes the view that it may be necessary to start working towards a more fully developed risk-driven model for EU export controls, where limited resources are invested into controlling the highest-risk items. According to the Commission, in order for the model to work, the following would have to be ensured:

- a common risk assessment approach would have to be used by all export control authorities;
- a greater exchange of information on suspicious transactions and licenses issued would have to take place in a systematic fashion;
- national general export authorisations would have to be progressively phased out in favour of EU general export authorisations;
- a common approach would have to be developed for catch-all controls;
- a satisfactory solution to the problem of intra-EU transfer controls would have to be found;
- coordinated enforcement across the EU would have to take place coupled with improved access to relevant information for customs.

The Commission argues that this model would contribute to equal treatment for exporters, an improved climate for businesses to operate, strengthened control over the most high-risk transactions and strengthened exports from the EU. The Member States would still be able to prevent exports from taking place if their security interests were at stake.

According to the Commission, to ensure that a future EU export control architecture functions as expected systematic information exchange would need to take place with regard to various aspects of export controls. At a minimum, this could include:

- the details of licenses issued by EU Member States;
- details of exporters engaged in the export of dual-use items;
- details of exporters registered to use general export authorisations;
- suspicious entities seeking to procure dual-use items.

According to the Government's memorandum, the Commission's proposal could lead to reform of Regulation (EC) No 428/2009 and the need to amend Swedish legislation.

## Examination by the Committee

The Committee welcomes the Commission's initiative to launch, via the Green Paper, a broad debate on how the EU's dual-use export control system is working. Sweden should continue to work actively within the EU framework with a view to stepping up export controls as a tool for non-proliferation of weapons of mass destruction and to combat the uncontrolled flow of conventional weapons.

The Committee shares the Government's view that it is important for a careful balance to be struck between continuing to implement strict export controls in Sweden and, wherever possible, eliminating obstacles to legitimate trade. As the trade in controlled items can influence national foreign and security policy, the Committee takes the view that for the process of authorising the export of dual-use items will continue to be carried out by the licensing authority of the Member State in question. The Committee agrees with the Commission's view that it is important for the controls to be made where they are of most use from a non-proliferation perspective. It is also important to ensure that changes to the export control system do not impair the security aspects of maintaining an export control or undermine respect for international non-proliferation obligations.

The Committee notes that, according to UN Security Council Resolution 1540 (2004), all States should take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and that, to this end, States should, among other things, establish transit checks. Moreover, the Committee emphasises the importance of an EU dual-use export control system based on UN Security Council Resolutions 1325 and 1889 on women, peace and security, Security Council Resolutions 1612 and 1992 on children in armed conflict and Security Council Resolutions 2820 and 1888 on sexual violence in armed conflict.

The Committee welcomes, together with the Government, proposals for greater harmonisation between the Member States, not least as far as the interpretation of the criteria and definitions in both Regulation (EC) No 428/2009 and its Annexes is concerned. However, the question of whether individual Member States should be allowed, on the basis of national foreign policy considerations, to apply a more restrictive interpretation than that which has been jointly agreed at European level should be considered. The whole point of stepped-up harmonisation must be that it leads to greater effectiveness.

It is important for agreement to be reached between different policy fields. The EU system must not be allowed to hinder individual Member States' or the international community's efforts to achieve fair and sustainable global development or efforts to achieve greater global security through international measures in line with mandates from the United Nations.

The Committee notes that the Government Office's Circular 2 states that the Government Office, within five weeks of a Commission Green Paper being presented, should draw up a memorandum and submit it to Parliament. The Committee regrets that memorandum 2011/12:FPM4 on the Green Paper in question was not submitted until 14 weeks after the Green Paper was published.

# Specific opinions

## 1. Dual-use export control system (Social Democratic Party)

Urban Ahlin, Carina Hägg, Olle Thorell and Désirée Liljevall (all Social Democratic Party) state that: For the Social Democratic Party, it is important for all trade in weapons and dual-use items to be bound by strict rules. Sweden should be a leading country with regard to its restrictive legislation in this area. We welcome the improved effectiveness and coordination between the Member States, but individual Member States must be allowed, *inter alia* on the basis of their own foreign policy considerations, to pursue a more restrictive policy. The common EU policy should represent a minimum, not a maximum, level of restrictiveness.

## 2. Dual-use export control system (Green Party, Left Party)

Bodil Ceballos (Green Party) and Hans Linde (Left Party) state that: We welcome every initiative at national or international level leading to clearer and stricter rules regarding trade in weapons and dual-use items. We are therefore pleased, in principle, that the EU has raised this matter by means of the Green Paper on the dual-use export control system. However, we consider it essential that any future regulation of this area at EU level must consist of minimum rules so that the individual Member States have the opportunity to go further and introduce more restrictive rules at national level. The Committee's majority view on this point is too vague. We consider it important that Sweden, at this stage in the process, sends a clear signal that we wish to safeguard the rights of individual Member States to introduce more restrictive rules.

## 3. Dual-use export control system (Sweden Democrats)

Julia Kronlid (Sweden Democrats) states that: The Sweden Democrats share the Committee's view that for the process of authorising the export of dual-use items should continue to be carried out by the licensing authority of the country in question. However, we would like to clarify our position. The Commission, in its Green Paper, states that it would be desirable for national authorisations to gradually be phased out in favour of a joint general EU authorisation issued by the Commission. We take the view that this proposal should not be implemented, as a direct consequence of the Committee's standpoint that such authorisations should continue to be issued by the national authorities. We share the Committee's view that the EU system should not be allowed to impede individual Member States' efforts to achieve fair and sustainable global development. We would also emphasise that the EU system should also not be allowed to impede Member States' need to protect their own foreign and security interests.

Annex

## List of proposals discussed

Commission Green Paper on the dual-use export control system of the European Union: ensuring security and competitiveness in a changing world, COM (2011) 393