

Cefic views on “the Recast of the EU Dual Use Goods legislation”

Protecting human rights and international security is vital. And there is no reason to put this into question. We must not ignore respect for human rights as well as any risk of the international security situation, in the final destination country.

The introduction of any instrument to prevent human rights violations is fully in line with the Chemical Industry’s overall approach to Corporate Responsibility, and the chemical industry agrees with export control regimes as their objective is to prevent any misuse of chemical products in civilian and military applications.

In this respect, the chemical industry is already confronted with a variety of trade and production control regimes to prevent any misuse of its products (ex: export control regulations on drug precursors, explosive precursors and dual-use goods; Chemical Weapons Convention; Australia Group; Wassenaar Arrangement, Montreal Protocol; Prior informed consent regulation).

Cefic understands and supports the Commission’s goals within its proposal for a modernized EU regulation on Dual-use items. However, controls should be instrumental, risk based and proportionate to the objectives pursued and least trade restrictive, in order to keep a global level-playing field and competitiveness.

Licensing architecture

The proposal goes along the lines of reducing administrative burden by introducing new general authorizations, especially for large projects and intercompany technology transfer. This is very important for a global industry with complex and worldwide supply chains like the chemical industry, and therefore we thank the Commission.

However, the shortening of the validity period of export authorizations to one year will, instead, bring heavy burden for the competent approval authorities as well as for the chemical industry. On the one hand, processing time for applications will become much longer, and on the other hand, the chemical industry has many long-term customer relations where customers are supplied with the same substances over many years.

We therefore ask the Commission to review the validity period of export authorizations.

Catch-all controls and due diligence

Legal certainty and security of planning are very important for business. The more elaborated and specific the rules are the better and more easily we can implement them.

However, the extension of catch-all controls to human rights and the introduction of a due diligence obligation for companies will cause major legal uncertainty and require the private sector to collect information that even intelligence services have difficulties to acquire.

Assessment of any individual export situation will be very difficult for companies, and hardly possible with the usual IT list-based control systems. Moreover, apart from a sensitive political judgment, it is unclear which information sources companies must consult or assess and to what extent.

In addition, companies will most likely tend to strive for zero-risks, either by requesting increasing export authorizations, or abstaining from exporting certain goods to certain regions. As a result, this situation will harm the global level-playing field and reduce the chemical sectors' international competitiveness.

The responsibility of whether or not products require a license should not be shifted on to companies.

Mandatory consultations

We appreciate the introduction of a mandatory consultation procedure between competent authorities as this will contribute to a harmonized application and, goes in the right direction for an acceptable level-playing field.

However, the Commission's proposal makes reference to a database recording all licensing requirements, end users and items of concern. Although we understand the goal of the Commission, we stress that the judgment of an end-user being unreliable is regularly made on the basis of confidential information, and concrete particulars on why exportation was not permitted should not be passed on, in the interest of the customer-supplier relations. Evaluation errors cannot be excluded, and such errors would keep companies from other Member States from carrying out relevant export, due to the registration.

Cefic calls the Commission not to develop the database.

Dual-use goods list

The Commission's proposal provides the possibility to amend the list of dual-use items by Delegated Acts if non-listed items pose a risk for human rights and security. Although we understand that the Commission wants to provide the EU with flexibility to amend the list of dual-use items, the chemical sector stresses that, decisions on the listing of dual-use items should only be made on the basis of international regimes, not by the EU unilaterally.

Extraterritoriality

In its proposal, the Commission leaves vagueness on the interpretation of broker and technical assistance regarding abroad subsidiaries of EU companies.

The extraterritorial application of legislations is highly controversial in international law and should be kept as minimal as possible. We therefore call for clarification, also for reasons of legal certainty.

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About Cefic

Cefic, the European Chemical Industry Council, founded

in 1972, is the voice of 29,000 large, medium and small chemical companies in Europe, which provide 1.2 million jobs and account for 17% of world chemicals production.