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#### COVER NOTE

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 12 October 2015

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 12.10.2015  
amending Council Regulation (EC) No 428/2009 setting up a Community  
regime for the control of exports, transfer, brokering and transit of dual use  
items

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Delegations will find attached document C(2015) 6823 final.

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Encl.: C(2015) 6823 final



Brussels, 12.10.2015  
C(2015) 6823 final

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 12.10.2015**

**amending Council Regulation (EC) No 428/2009 setting up a Community regime  
for the control of exports, transfer, brokering and transit of dual use items**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE DELEGATED ACT

Council Regulation (EC) No 428/2009 requires dual-use items - items that can be used for both civilian and military purposes or can contribute to the proliferation of weapons of mass destruction, or both - to be subject to effective control when they are exported from or transit through the European Union, or are delivered to a third country as a result of brokering services.

Annex I to Regulation (EC) No 428/2009 establishes the common list of dual-use items subject to controls in the Union – the "EU control list". Decisions on the items subject to controls are taken within the framework of the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group, the Wassenaar Arrangement and the Chemical Weapons Convention.

The list of dual-use items set out in Annex I to Regulation (EC) No 428/2009 needs to stay current in order to ensure full compliance with international security obligations, guarantee transparency, maintain the competitiveness of exporters and facilitate references for export control authorities and economic operators. This requires updated and consolidated versions of Annex I to Regulation (EC) No 428/2009 to be published at regular intervals.

Article 15(1) and (3) of Regulation (EC) No 428/2009 stipulate that "*the Commission shall be empowered to adopt delegated acts ... concerning updating the EU control list*"..."*in conformity with the relevant obligations and commitments, and any modifications thereof, that Member States have accepted as members of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties*". Article 15(3) further sets out that "*where the updating of Annex I concerns dual-use items which are also listed in Annexes IIa to IIg or IV, those Annexes shall be amended accordingly*".

The current EU control list was last updated by Commission Delegated Regulation (EU) No 1382/2014 of 22 October 2014, taking account of the control list changes adopted by the export control regimes until the end of 2013. The changes to the control lists adopted by the export control regimes in 2014 now require another amendment of Annex I of the Council Regulation (EC) No 428/2009. The delegated act therefore presents a variety of amendments to the EU control list concerning the control parameters, the technical definitions and descriptions and the removal or addition of dual-use items. The amendments to the EU control list in Annex I also necessitate consequential amendments to Annexes IIa to IIg and Annex IV.

It should be recalled that the provisions of Regulation (EC) No 428/2009 are without prejudice to those of Article 9 of Decision No 1104/2011/EU of the European Parliament and of the Council of 25 October 2011 on the rules for access to the public regulated service provided by the global navigation satellite system established under the Galileo programme.

### 2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In line with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the European Commission, appropriate and transparent consultations, including at expert level, have been carried out in the preparation of this

delegated act. The relevant documents have been transmitted in a timely and appropriate manner to the European Parliament and to the Council. The Dual-Use Coordination Group was duly consulted at its meeting on 15 May 2015.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

Regulation (EU) No 599/2014 of the European Parliament and of the Council amended Regulation (EC) No 428/2009, by adding Article 15(3) empowering the Commission to adopt delegated acts concerning the updating of the list of dual-use items set out in Annex I, Annex II and Annex IV.

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 12.10.2015**

**amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual use items**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual use items<sup>1</sup> and in particular Article 15(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 428/2009 requires dual-use items to be subject to effective control when they are exported from or transit through the Union, or are delivered to a third country as a result of brokering services provided by a broker resident or established in the Union.
- (2) Annex I to Regulation (EC) No 428/2009 establishes the common list of dual-use items that are subject to controls in the Union. Decisions on the items subject to controls are taken within the framework of the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group, the Wassenaar Arrangement and the Chemical Weapons Convention.
- (3) The list of dual-use items set out in Annex I to Regulation (EC) No 428/2009 needs to be updated regularly so as to ensure full compliance with international security obligations, to guarantee transparency, and to maintain the competitiveness of exporters. The changes to the control lists adopted by the export control regimes in 2014 now require another amendment of Annex I of the Council Regulation (EC) No 428/2009. In order to facilitate references for export control authorities and operators, an updated and consolidated version of Annex I to Regulation (EC) No 428/2009 should be published.
- (4) Annexes IIa to IIg to Regulation (EC) No 428/2009 establish Union General Export Authorisations.
- (5) Annex IV to Regulation (EC) No 428/2009 establishes authorisation requirements for certain intra-Community transfers.
- (6) The amendments to the EU control list in Annex I necessitate consequential amendments to Annexes IIa to IIg and Annex IV for dual-use items which are also listed in Annexes IIa to IIg and Annex IV.

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<sup>1</sup> OJ L 134, 29.5.2009, p. 1.

- (7) Regulation (EC) No 428/2009 empowers the Commission to update the list of dual-use items set out in Annex I as well as Annexes IIa to IIg and Annex IV by means of delegated acts, in conformity with the relevant obligations and commitments, and any modifications thereto, that Member States have accepted as members of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties.
- (8) Regulation (EC) No 428/2009 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex I, II and IV to Regulation (EC) No 428/2009 are amended as follows:

- (1) Annex I is replaced by the text set out in Annex I to this Regulation.
- (2) Annexes IIa to IIg are replaced by the text set out in Annex II to this Regulation.
- (3) Annex IV is replaced by the text set out in Annex III to this Regulation.

*Article 2*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12.10.2015

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*