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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	4 November 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	ANNEX to the Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, including a report on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Regulation (EU) No 599/2014 of the European Parliament and the Council of 16 April 2014 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 COM(2019) 562 final.

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Encl.: COM(2019) 562 final



Brussels, 4.11.2019  
COM(2019) 562 final

ANNEX

ANNEX

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**Report from the Commission to the European Parliament and the Council  
on the implementation of Regulation (EC) No 428/2009 setting up a Community regime  
for the control of exports, transfer, brokering and transit of dual-use items, including a  
report on the exercise of the power to adopt delegated acts conferred on the Commission  
pursuant to Regulation (EU) No 599/2014 of the European Parliament and the Council  
of 16 April 2014 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**

## ANNEX

### List of the measures taken by the Member States pursuant to Article 24 and notified to the Commission (national enforcement measures)

Member State	Relevant legislation	Administrative penalties	Criminal penalties
<b>BE</b>	<ul style="list-style-type: none"> <li>- Act of 11 September 1962 concerning the Import, export and transit of goods and the associated technology</li> <li>- Article 231 of the General Act on Customs and Excise who defines the authority to determine and prosecute</li> </ul>	<ul style="list-style-type: none"> <li>- Fine of up to 2 times the value of the goods</li> <li>- Confiscation of the goods (“Declaring the goods forfeited”)</li> </ul>	<ul style="list-style-type: none"> <li>- Prison sentence up to 5 years</li> </ul>
<b>BG</b>	<ul style="list-style-type: none"> <li>- Defence-related products and dual-use items and technologies export control Law (State Gazette No 26/29.03.2011)</li> <li>- Criminal Code</li> </ul>	<ul style="list-style-type: none"> <li>- Fine up to BGN 500.000 (approx. EUR 250.000) (Art. 72, 73 and 74 of the Law)</li> </ul>	<ul style="list-style-type: none"> <li>- Prison sentence up to ten years</li> <li>- Fine of up to two hundred thousand leva (approx. EUR 100.000) (Art. 339b of Criminal Code)</li> </ul>
<b>CY</b>	<ul style="list-style-type: none"> <li>- Defence (Export of Goods) Regulations (1993)</li> <li>- Ministerial Order 312/2009</li> </ul>	<ul style="list-style-type: none"> <li>- Fine of up to 2.600 EUR</li> <li>- Confiscation of goods may be ordered by a court or in certain cases by the customs</li> </ul>	<ul style="list-style-type: none"> <li>- Prison sentence up to 3 years</li> </ul>

<p><b>DE</b></p>	<ul style="list-style-type: none"> <li>- Foreign Trade and Payments Act (6 June 2013) (Außenwirtschaftsgesetz) - provides for administrative and criminal penalties in case of violations of national and European export control law</li> <li>- Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung) and the Administrative Offences Act (Ordnungswidrigkeitengesetz) - complements the Foreign Trade and Payments Act with regard to administrative penalties</li> </ul> <p><i>(n.b.: even the attempt at illegal export/brokering/technical assistance can constitute an infringement and is punishable).</i></p>	<p>Penalties on individuals (negligence)</p> <ul style="list-style-type: none"> <li>- Fine up to EUR 500.000 (Para. 19 Foreign Trade and Payments Act on breaches of UN-/EU-embargos, EU- and national export control law)</li> <li>- Fine up to EUR 1.000.000 (Para 130, 9 Administrative Offences Act, on breaches of supervisory obligations)</li> </ul> <p>Penalties on companies (intent or negligence)</p> <ul style="list-style-type: none"> <li>- Fine up to EUR 10.000.000 for criminal offences of persons in a leading position (Para 30, 9 Administrative Offences Act)</li> <li>- Fine up to EUR 500.000 for administrative offences of persons in a leading position (Para 30, 9 Administrative Offences Act)</li> </ul> <p><b>When the infringement consists of a breach of</b></p>	<p>When the infringement is based on intent:</p> <ul style="list-style-type: none"> <li>- Fine or prison sentence up to 15 years (Para. 17, 18 Foreign Trade and Payments Act on breaches of UN-/EU-embargos, EU- and national export control law)</li> </ul> <p>When the infringement is based on gross negligence:</p> <ul style="list-style-type: none"> <li>- Fine or prison sentence up to 5 years (Para. 17 on breaches of UN-/EU-embargos).</li> </ul>
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		<b>formalities:</b> <ul style="list-style-type: none"> <li>- Administrative constraints (fines as well as other compulsory measures)</li> </ul> <p><i>Note: the reliability of the exporter is a prerequisite to issue licenses according to Para. 8 Foreign Trade Act. Therefore, (former) breaches of formalities are taken into consideration in the licensing procedure, f.i. by excluding a company from facilitated procedures)</i></p>	
<b>DK</b>	<ul style="list-style-type: none"> <li>- Promulgation Law no. 635 of 9 June 2011.</li> <li>- Promulgation Law (Criminal Code) no. 1156 of 20 September 2018.</li> </ul>	<ul style="list-style-type: none"> <li>- N/A</li> </ul>	<p>Violation of export control rules:</p> <ul style="list-style-type: none"> <li>- Fine (no set amount)</li> <li>- Prison sentence up to 2 years (§ 2 of law no. 635 of 9 June 2011).</li> </ul> <p>Violation under aggravating circumstances:</p> <ul style="list-style-type: none"> <li>- Prison sentence up to 6 years (§ 114 h of the criminal code).</li> </ul>

<b>EE</b>	<ul style="list-style-type: none"> <li>- Strategic Goods Act</li> <li>- Penal Code</li> </ul>	<ul style="list-style-type: none"> <li>- Fine up to approx. EUR 400 (violation of notification obligation by physical person)</li> <li>- Fine up to EUR 640 (violation of notification obligation by legal person)</li> </ul>	<ul style="list-style-type: none"> <li>- Fine (unlimited), or</li> <li>- Prison sentence up to 20 years</li> </ul>
<b>FI</b>	<ul style="list-style-type: none"> <li>- Penal code</li> </ul>		<p>When the infringement is based on intent:</p> <ul style="list-style-type: none"> <li>- Fine up to EUR 850.000 for legal persons</li> <li>- Prison sentence up to 4 years (Chapter 46, paras 1-3)</li> </ul> <p>When the infringement is based on negligence (applicable only when violating art 4.4 of Regulation (EC) no 428/2009):</p> <ul style="list-style-type: none"> <li>- Fine (no maximum amount)</li> <li>- Prison sentence up to 6 months (Chapter 46, para 12)</li> </ul>
<b>FR</b>	<ul style="list-style-type: none"> <li>- Penal Code (Art. 411-6 : delivering or making available to foreign entity knowledge/goods which may harm nation's fundamental interests)</li> <li>- Customs Code (Art. 38, 414, 427)</li> <li>- Defence Code (Art. L1333-9/13, Art. L2339-14 to 18, Art.</li> </ul>	<ul style="list-style-type: none"> <li>- Fine up to 225 000 euros</li> <li>- Fine up to 3 times value of good</li> <li>- Confiscation of good</li> <li>- Fine up to 7 500 000 euros</li> </ul>	<ul style="list-style-type: none"> <li>- Prison sentence up to 15 years</li> <li>- Prison sentence up to 5 years</li> <li>- Prison sentence up to 30 years or life sentence</li> </ul>

	<p>L2341-1 to 6, L2342-3 to 81)</p> <p><i>All above mentioned dispositions were introduced by Law n°2011-266 dated 14 March 2011 related to fight against WMD proliferation</i></p> <ul style="list-style-type: none"> <li>- Defence Code (Part 2, Book III, Title II "Security of information systems", Chapter I – Art. L2321-2-2 and L2322-1)</li> </ul>	<ul style="list-style-type: none"> <li>- Fine up to 150 000 euro</li> <li>- Confiscation of good</li> </ul>	<ul style="list-style-type: none"> <li>- General disqualification for up to 5 years</li> <li>- Prison sentence up to 2 years</li> </ul>
<b>HR</b>	<ul style="list-style-type: none"> <li>- Act on the Control of Dual-Use Items (OJ 80/11, 68/13)</li> </ul>	<ul style="list-style-type: none"> <li>- Fine of at least 50,000 HRK (cca EUR 6.700) for breaching the formalities (Art.22 and 23)</li> <li>- Fine up to max. 500,000.00 HRK (cca EUR 68.000) for other offenses (e.g. lack of licence or notification)</li> </ul>	<ul style="list-style-type: none"> <li>- Prison sentence from 6 months to 5 years if foreign policy interests are threatened or if international obligations and sanctions are violated</li> <li>- Prison sentence of at least 5 years in case of death of one or more persons or large-scale material damage (Art.24)</li> </ul>
<b>HU</b>	<ul style="list-style-type: none"> <li>- Government Decree No 13 of 2011 on the foreign trade authorisation of dual-use items (Para. 15. and Para 28.)</li> <li>- Act C of 2012 on Criminal Code (Section 330)</li> </ul>	<ul style="list-style-type: none"> <li>- Fine from EUR 300 to EUR 15.500 (Breaches of administrative formalities)</li> <li>- Fine from EUR 15.500 to EUR 30.000 (Exceeding the scope of the authorisation violating</li> </ul>	<ul style="list-style-type: none"> <li>- Prison sentence from 1 to 5 years (exceeding the scope of the authorisation violating foreign and security policy or non-proliferation obligations, trade without authorisation)</li> <li>- Prison sentence from 2 to 8 years</li> </ul>

		foreign and security policy or non-proliferation obligations)	Criminal offense involves nuclear dual use items - Prison sentence from 1 to 3 years (Preparation of infringement above)
<b>IE</b>	- Control of Exports Act 2008	- N/A	- Fine up to EUR 10.000.000 or 3 times the value of the goods or technology concerned and/or - Prison sentence up to 5 years
<b>IT</b>	- Legislative Decree 15 December 2017, no. 221 (Art. 18)  <i>(n.b.: even the attempt at illegal export/brokering/technical assistance can constitute an infringement and is punishable)</i>	When the infringement consists of a breach of administrative formalities based on negligence:  - Fine from EUR 15.000 to EUR 90.000.	When the infringement is based on intent:  - Fine up to EUR 250.000 and/or prison sentence up to 6 years (e.g. for any export or transit without license, false declaration and/or documentation)  - Seizure of the goods (or of other goods of the same value, in the possession of the exporter)
<b>LT</b>	- Code of Administrative Offences - Criminal Code (26 September 2010)	For infringements to the rules of licensing or control of export, import, transit and brokering of strategic goods imposes (Article 141 of the Code of Administrative Offences) - Fine from EUR 90 to EUR 170 for individuals - Fine from EUR 300 to EUR 560	When the infringement concerns the smuggling of strategic goods:  - Prison sentence from 3 to 10 years (Article 199(4) of the Criminal Code)

		for heads of legal entities or foreign legal entities and subsidiaries of other organizations.	
<b>LV</b>	<ul style="list-style-type: none"> <li>- Law on the Circulation of Goods of Strategic Significance (21 June 2007)</li> <li>- Latvian Administrative Violations Code (1984)</li> <li>- Law on Customs (2 June 2016)</li> <li>- Criminal Law (17 June 1998)</li> </ul>	<ul style="list-style-type: none"> <li>- Fine up to 750; on legal persons from EUR 280 up to 7.100</li> <li>- Confiscation of the relevant goods may be applied. (Para 179<sup>1</sup> and 201<sup>10</sup> Latvian Administrative Violations Code)</li> </ul>	<p>If the provisions of the Law on the Circulation of Goods of Strategic Significance have been violated:</p> <ul style="list-style-type: none"> <li>- Prison sentence of up to two years</li> <li>- Community service, deprivation of rights to perform related economic activities (Para 237 of the Criminal Law)</li> </ul> <p>If goods of strategic significance have been exported or imported in any illegal way:</p> <ul style="list-style-type: none"> <li>- Prison sentence of up to 12 years.</li> <li>- Temporary deprivation of liberty (up to 3 months),</li> <li>- community service,</li> <li>- A fine, with or without the confiscation of property.</li> <li>- Ban to perform related economic activities.</li> </ul> <p>Ban to engage in specific employment or the right to take up a specific office for a period up to five years (Para 190<sup>1</sup> The Criminal Law).</p>

<b>LU</b>	<ul style="list-style-type: none"> <li>- Law of 27 June 2018 on export control (as amended)</li> </ul>	<ul style="list-style-type: none"> <li>- Prohibition, limited to six months or definite, to carry out one or more activities, a suspension for a maximum period of six months from the use of any authorization or fines up to 1250€ per day, however not exceeding 25,000€ in total. (Art. 54 Law of 27 June 2018 on export control)</li> </ul>	<ul style="list-style-type: none"> <li>- Criminal fines from 251€ to 1,000,000€, imprisonment from 8 days to 10 years or by one of those penalties only (Art. 57 – 61 Law of 27 June 2018 on export control)</li> </ul> <p>(n.b.: If the non-observation of a restrictive measure results in a substantial financial gain, the fine may be increased to four times the amount subject to the offense. Art. 58 Law of 27 June 2018 on export control )</p>
<b>NL</b>	<ul style="list-style-type: none"> <li>- Economic Offenses Act (1950)</li> </ul>	<p>When the infringement consists of a breach of formalities:</p> <ul style="list-style-type: none"> <li>- Fine up to EUR 83.000 EUR, or</li> <li>- Prison sentence of up to one year, or</li> <li>- Work assignment.</li> </ul> <p>Additional penalties e.g. temporary or permanent ban to perform related economic activities, and/ or confiscation of the goods and the profits gained by the illegal transaction.</p>	<p>When the infringement is based on intent:</p> <ul style="list-style-type: none"> <li>- Fine up to EUR 830.000 or</li> <li>- Prison sentence up to six years, or</li> <li>- Work assignment.</li> </ul> <p>Additional penalties e.g. temporary or permanent ban to perform related economic activities, and/ or confiscation of the goods and the profits gained by the illegal transaction.</p>
<b>AT</b>	<ul style="list-style-type: none"> <li>- 2011 Foreign Trade</li> </ul>	Some infringements, i.e. breaches of	Most infringements constitute criminal

	<p>Act</p> <ul style="list-style-type: none"> <li>- 2013 Nuclear Non-Proliferation Act (SKG 2013)</li> <li>- Criminal Code</li> </ul>	<p>reporting requirements, constitute administrative offenses:</p> <ul style="list-style-type: none"> <li>- Fine up to EUR 25,000 (section 87 Foreign Trade Act) or EUR 40,000 (section 26 SKG for Cat. 0 goods)</li> </ul>	<p>offences:</p> <ul style="list-style-type: none"> <li>- criminal fine or prison sentence up to three years in case of intent, in qualified cases up to ten years (sections 79, 80, 82 Foreign Trade Act, section 177b Criminal Code for Cat. 0 goods)</li> <li>- criminal fine or prison sentence up to one year in case of negligence, in qualified cases up to two years (sections 79, 80, 82 Foreign Trade Act, section 177c Criminal Code for Cat. 0 goods)</li> </ul>
<b>PL</b>	<ul style="list-style-type: none"> <li>- Act of 29 November 2000 on foreign trade in goods, technologies and services of strategic importance to the security of the State and to maintaining international peace and security (the consolidated text of the Act as amended as of 21 May 2019)</li> <li>- Criminal Code</li> </ul>	<ul style="list-style-type: none"> <li>- Fine up to 200 000 PLN imposed by the trade control authority by a relevant administrative decision (trade without a valid licence) (Art. 37)</li> <li>- Fine up to 100 000 PLN: <ul style="list-style-type: none"> <li>1. no submission of a declaration of intended import or EU transfer of items used in telecommunications or for information security to the import monitoring authority)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Prison sentence from 1 to 10 years (<i>trade without a relevant licence or contrary to conditions set forth in the licence, even unintentionally</i>) (Art. 33.1)</li> <li>- Fine, restriction of liberty or imprisonment up to 2 years (<i>if the person carrying out trade contrary to conditions set forth in the licence acts with no intent, and if this person takes actions referred to in Art. 31(1)</i>) (Art. 33.2)</li> <li>- Confiscation of the goods and the</li> </ul>

		<p>(Art. 37a)</p> <p>2. trade contrary to the conditions set forth in the licence (Art. 38)</p> <p>- Fine up to 50 000 PLN (some infringements: i.e. breaches of reporting requirements) (Art. 39)</p>	<p>profits gained by the illegal transaction</p>
<b>PT</b>	<p>- Decree Law nr. 130/2015, 9 July</p>	<p>- Fine up to EUR 15 000 for a private person or EUR 30.000 for a legal person (the amount of the fine is reduced by half in the case of negligence)</p> <p>- Accessory penalties might be applicable e.g. suspension of the use of licenses up to 2 years, prohibition of global license for 2 years.</p>	<p>- Prison sentence up to 5 years for natural persons</p> <p>- Fine up to EUR 600.000 for legal persons</p> <p>- Accessory penalties might be applicable e.g. prohibition of applying for licenses for a period up to 2 years, publication of the final sentence condemning the exporter at his own expenses</p>
<b>RO</b>	<p>- Emergency Ordinance No. 119 of 23.12.2010 on the control of exports of dual-use items</p> <p>- Emergency Ordinance No. 202 of 4.12.2008 on the implementation of international sanctions</p>	<p>- Fine up to 6500 € for infringement of formalities (Article 35 of the Emergency Ordinance No. 119 of 23.12.2010, Article 26 of the Emergency Ordinance No. 202 of</p>	<p>- Prison sentence from 1 to 5 years for the export/re-export/transfer/brokering of dual use items without a licence (Article 34 of the Emergency Ordinance No. 119 of 23.12.2010, modified by Law</p>

		4.12.2008)	No. 187 of 19.11.2012)
<b>SE</b>	<ul style="list-style-type: none"> <li>- Dual Use Items and Technical Assistance Control Act (2000:1064), Articles 18-23</li> </ul>	<ul style="list-style-type: none"> <li>- N.A. (Offences of export control concerning dual use items and technical assistance are only sanctioned with criminal penalties).</li> </ul>	<ul style="list-style-type: none"> <li>- Fine up to 150 000 SEK, or</li> <li>- Prison sentence of up to six years</li> <li>- Furthermore, property (such as goods and money) that relates to the commission of a crime can be forfeited.</li> </ul>
<b>SI</b>	<ul style="list-style-type: none"> <li>- Act regulating the control of exports of dual-use items (ZNIBDR)</li> <li>- Decree on the procedures for issuing authorisations and certificates and on competence of the Commission for the control of exports of dual-use items</li> <li>- Criminal code</li> <li>- Liability of Legal Persons for Criminal Offences Act</li> </ul>	<ul style="list-style-type: none"> <li>- Fine up to EUR 125.000 and additional fine up to EUR 4.100 for legal person and EUR 1.200 for a private person (ZNIBDR, Art.13)</li> <li>- Fine of EUR 200 to 10.000 and additional fine of EUR 100 to 1.200 for responsible person (Decree on the procedures for issuing authorisations and certificates and on competence of the Commission for the control of exports of dual-use items – Art.10: Infringement of reporting obligations)</li> </ul>	<ul style="list-style-type: none"> <li>- Fine up to EUR 500.000 , or</li> <li>- Prison sentence up to five years (Criminal code - Art.307), or</li> <li>- Seizure of assets, or</li> <li>- Termination of legal entity</li> </ul> <p>(Liability of Legal Persons for Criminal Offences Act – Art.25).</p>
<b>SK</b>	Law No 39/2011 on dual-use items and on the amendment of the Act of the National Council of the	<ul style="list-style-type: none"> <li>- Fine up to EUR 30.000 (Offences under Section 32)</li> </ul>	

	Slovak Republic No 145/1995 Coll. on Administrative Fees (as amended).	- Fine up to EUR 650,000 (Other administrative offences Section 33).	
<b>UK</b>	<ul style="list-style-type: none"> <li>- The Export Control Order 2008 (ECO 2008)</li> <li>- The Customs and Excise Management Act 1979 (CEMA)</li> </ul>	- N.A.	All UK export control offences fall under the criminal heading. They do not all have a custodial punishment attached to them and these are typically reserved for those where there is evidence of intent to circumvent controls. The maximum penalties are an unlimited fine or a maximum 10 years custodial punishment, or both (CEMA/ECO 2008 – Articles 35, 42, 152).