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COVER NOTE

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

date of receipt: 26 September 2017

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

No. Cion doc.: C(2017) 6321 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 26.9.2017
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

Delegations will find attached document C(2017) 6321 final.

Encl.: C(2017) 6321 final



Brussels, 26.9.2017
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COMMISSION DELEGATED REGULATION (EU) .../...

of 26.9.2017

**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

According to the provisions of Council Regulation (EC) No 428/2009 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 - shall 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 Council Regulation (EC) No 428/2009 establishes the common list of dual-use items subject to controls in the Union – the "EU dual-use control list". Decisions on the items subject to controls are taken within the framework of the international non-proliferation regimes and export control arrangements, namely 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 Council Regulation (EC) No 428/2009 needs to stay current in order to ensure full compliance with international security obligations, guarantee transparency, maintain the Union competitiveness and facilitate references for export control authorities and economic operators. This requires updated and consolidated versions of Annex I to Council Regulation (EC) No 428/2009 to be published at regular intervals.

Article 15(1) and (3) of Council Regulation (EC) No 428/2009 stipulate that "*the Commission shall be empowered to adopt delegated acts ... concerning updating the list of dual-use items set out in Annex I' ... "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 dual-use control list was last updated by Commission Delegated Regulation (EU) No 2016/1969 of 12 September 2016, taking account of the control list changes adopted by the international non-proliferation regimes and export control arrangements until the end of 2015. The changes to the control lists adopted by the international non-proliferation regimes and export control arrangements in 2016 now require another amendment of Annex I to Council Regulation (EC) No 428/2009. The delegated act therefore presents a variety of amendments to the Union dual-use control list concerning the control parameters, the technical definitions and descriptions and the removal or addition of dual-use items. The amendments to the Union dual-use 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 Council 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 Commission¹, 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 23 May 2017.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Regulation (EU) No 599/2014 of the European Parliament and of the Council amended Council 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 IIa to IIg and Annex IV.

¹ See Annex to Interinstitutional Agreement of 13 April 2016 between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

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

of 26.9.2017

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 items², and in particular Article 15(3) thereof,

Whereas:

- (1) 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 economic operators. The changes to the control lists adopted by the international non-proliferation regimes and export control arrangements in 2016 now require another amendment of Annex I to Regulation (EC) No 428/2009. In order to facilitate references for export control authorities and economic operators, an updated and consolidated version of Annex I to that Regulation should be published.
- (4) Annexes IIa to IIf to Regulation (EC) No 428/2009 establish Union General Export Authorisations.
- (5) Annex IIg to Regulation (EC) No 428/2009 establishes a list of dual-use items that shall be excluded from the scope of national general export authorisations and Union General Export Authorisations.
- (6) Annex IV to Regulation (EC) No 428/2009 establishes authorisation requirements for certain intra-Community transfers.

² OJ L 134, 29.5.2009, p. 1.

- (7) The amendments to the Union dual-use 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.
- (8) 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.
- (9) Regulation (EC) No 428/2009 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I, Annexes IIa to IIg and Annex IV to Council Regulation (EC) No 428/2009 are amended in accordance with the Annexes to this Regulation:

- (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, 26.9.2017

For the Commission
The President
Jean-Claude JUNCKER