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PROPOSAL

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

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

No. Cion doc.: COM(2018) 891 final

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL amending Council Regulation (EC) No 428/2009 by
granting a Union General Export Authorisation for the export of certain
dual-use items from the Union to the United Kingdom of Great Britain and
Northern Ireland

Delegations will find attached document COM(2018) 891 final.

Encl.: COM(2018) 891 final



Brussels, 19.12.2018
COM(2018) 891 final

2018/0435 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Council Regulation (EC) No 428/2009 by granting a Union General Export
Authorisation for the export of certain dual-use items from the Union to the United
Kingdom of Great Britain and Northern Ireland**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that, if the Withdrawal Agreement¹ is not ratified, the Unions' primary and secondary law will cease to apply to the United Kingdom from 30 March 2019 ('the withdrawal date'). The United Kingdom will then become a third country.

The Commission Communication 'Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan' of 13 November 2018² has set out the contingency measures it plans to take for the case that no withdrawal agreement will enter into force on the withdrawal date. In that Communication, the Commission listed the actions it considered necessary while recalling that additional actions may be necessary at a later stage.

The European Council (Article 50) reiterated its call, on 13 December 2018, for work on preparedness at all levels for the consequences of the United Kingdom's withdrawal to be intensified, taking into account all possible outcomes. This act is part of a package of measures which the Commission is adopting in response to this call.

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 items³ creates a common system of controls for export of dual-use items, in line with the international commitments and responsibilities of the Member States and of the European Union (EU). Under the Regulation, an authorisation shall be required for the export of dual-use items to third countries. This authorisation may be an individual, global or general authorisation. In order to support the EU's competitiveness and establish a level playing field for all Union exporters, while at the same time ensuring a high level of security and full compliance with international obligations, Council Regulation (EC) No 428/2009 provides for "Union General export authorisations" for the export of certain dual-use items to certain third countries under certain conditions. In particular, Annex IIa to the Regulation provides for a Union General Export Authorisation ("EU001") for certain low-risk transactions, e.g. exports to Australia, Canada, Japan, New Zealand, Norway, Switzerland (incl. Liechtenstein), and the United States of America.

The withdrawal of the United Kingdom from the Union without an agreement affects the trade of dual-use items between the EU and the United Kingdom: according to Council Regulation (EC) No 428/2009, the export of dual use items from the EU to the United Kingdom will require, as of the withdrawal date, an export authorisation issued by the competent national authority of the Member State where the exporter is established.

There are a number of reasons why the United Kingdom should be added to the list of countries on EU001:

¹ https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement_0.pdf.

² COM(2018) 880 final

³ OJ L 134, 29.5.2009, p. 1.

- The United Kingdom is a party to relevant international treaties and a member of international non-proliferation regimes and maintains full compliance with related obligations and commitments;
- The United Kingdom maintains full compliance with obligations under sanctions imposed by a decision or a common position adopted by the Council or by a decision of the OSCE or by a resolution of the Security Council of the United Nations;
- The United Kingdom applies proportionate and adequate controls effectively addressing considerations about intended end use and the risk of diversion consistent with the provisions and objectives of this Regulation.

Moreover, it is necessary to ensure a uniform and consistent application of controls throughout the EU in order to provide a level playing field for EU exporters and to protect EU and international security.

This proposal does not affect the ongoing ordinary legislative procedure to recast Council Regulation (EC) No 428/2009 proposed by the Commission on 28 September 2016.⁴

- **Consistency with other Union policies**

The EU export control regime for dual-use items provides that export authorisations are normally issued by the national competent authorities based on case-by-case assessments. A requirement for a specific authorisation for export to the United Kingdom is likely to cause significant administrative burden for exporters and competent authorities and risk creating an uneven playing field for exporters in the Member State, thus affecting the good functioning of the internal market and of the Common Commercial Policy. These disruptive effects could be mitigated by adding the United Kingdom to the list of destinations covered by EU001. This proposal is thus consistent with the general approach to contingency measures to address a withdrawal of the United Kingdom without agreement.

Moreover, considering that the United Kingdom is an important destination for dual-use exports and that it is committed to and ensures full compliance with relevant international obligations and commitments, adding the United Kingdom to the list of destinations covered by EU001 is also consistent with the objectives of this Regulation with respect to international and EU security.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis is Article 207 of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

Not applicable as international trade is an exclusive EU competence.

- **Proportionality**

The proposed Regulation is considered proportionate as it will avoid disproportionate trade disruptions and excessive administrative burden for EU exports of dual-use items to the UK

⁴ COM(2016) 616 final.

while preserving international and EU security. It does not go beyond what is necessary to achieve this objective and it refrains from any broader changes.

- **Choice of the instrument**

This proposal contains a limited amendment to address a very specific and one-off situation. Since the list of third countries covered by EU001 is established by Council Regulation (EC) No 428/2009 and considering that the Commission has no power to add other countries to that list, a regulation of the European Parliament and Council appears to be the only adequate form of legal act to address this situation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable due to the exceptional and one-off nature of the event necessitating this proposal.

- **Stakeholder consultations**

The specific circumstances surrounding the negotiations for the withdrawal of the United Kingdom from the Union and the continuously evolving situation posed major limitations on the possibility to consult publicly on the proposal. However, the challenges arising from the United Kingdom's withdrawal from the EU and possible solutions have been raised by various stakeholders and Member States' representatives.

- **Impact assessment**

In line with the Better Regulation Guidelines, an impact assessment is not needed, due to the exceptional nature of the situation. There are no materially different policy options available except for the one proposed.

- **Fundamental rights**

The proposal has no impact on the application or protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable due to the short-term nature of the proposed measure.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Regulation (EC) No 428/2009 by granting a Union General Export Authorisation for the export of certain dual-use items from the Union to the United Kingdom of Great Britain and Northern Ireland

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. The Treaties will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or failing that, two years after that notification, that is to say from 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.
- (2) Council Regulation (EC) No 428/2009⁵ sets up a common system for the control of exports of dual-use items which is necessary to promote Union and international security and to provide a level playing field for Union exporters.
- (3) Regulation (EC) No 428/2009 provides for "Union General export authorisations" which facilitate controls on low-risk exports of dual-use items to certain third countries. Currently, Australia, Canada, Japan, New Zealand, Norway, Switzerland, including Liechtenstein, and the United States of America are covered by Union General export authorisation No. EU001.
- (4) The United Kingdom is a party to relevant international treaties and a member of international non-proliferation regimes, maintains full compliance with related obligations and commitments, and applies proportionate and adequate controls to effectively address considerations about intended end use and the risk of diversion consistent with the provisions and objectives of this Regulation.
- (5) Considering that the United Kingdom is an important destination for dual-use items produced in the Union, it is appropriate to add the United Kingdom to the list of destinations covered by the Union General export authorisations No. EU001 in order to ensure a uniform and consistent application of controls throughout the Union, to

⁵ 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 (OJ L 134, 29.5.2009, p. 1).

promote a level playing field for Union exporters and to avoid an unnecessary administrative burden, while protecting Union and international security.

- (6) Given the urgency entailed by the circumstances of the United Kingdom's departure from the European Union, it is necessary to allow for a prompt application of the provisions provided for in this Regulation concerning the inclusion of the United Kingdom in the Union General export authorisation No EU001. Therefore, this Regulation should enter into force on the day following that of its publication in the Official Journal of the European Union.
- (7) The United Kingdom should be added to the list of destinations covered by the Union General export authorisations No. EU001 only in a situation where no withdrawal agreement concluded with the United Kingdom in accordance with Article 50(2) of the Treaty on European Union has entered into force by the date the Treaties cease to apply to and in the United Kingdom pursuant to Article 50(3) of the Treaty on European Union,

HAVE ADOPTED THIS REGULATION:

Article 1

Annex IIa, Part 2 of Council Regulation (EC) No 428/2009 is amended as follows:

- (a) the title "Exports to Australia, Canada, Japan, New Zealand, Norway, Switzerland, including Liechtenstein, and United States of America" is replaced by the following:
"Exports to Australia, Canada, Japan, New Zealand, Norway, Switzerland, including Liechtenstein, United Kingdom of Great Britain and Northern Ireland and United States of America";
- (b) in Part 2 the following is inserted after "Switzerland, including Liechtenstein":
"- United Kingdom of Great Britain and Northern Ireland".

Article 2

Entry into force and application

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

It shall apply from the day following that on which the Treaties cease to apply to the United Kingdom pursuant to Article 50(3) of the Treaty on European Union.

However, this Regulation shall not apply if a withdrawal agreement concluded with the United Kingdom in accordance with Article 50(2) of the Treaty on European Union has entered into force by that date.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President