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POSITION OF THE EUROPEAN PARLIAMENT

adopted at first reading on 23 October 2012 view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council amending Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (EP-PE_TC1-COD(2011)0310)

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POSITION OF THE EUROPEAN PARLIAMENT

adopted at first reading on 23 October 2012

view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council amending 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 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 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 procedure¹,

¹ Position of the European Parliament of 23 October 2012.

Whereas:

- (1) 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 items¹ requires such 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) In order to enable Member States and the Union to comply with their international commitments, Annex I to Regulation (EC) No 428/2009 establishes a common list of dual-use items that are subject to controls in the Union (Union 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.
- (3) Article 15 of Regulation (EC) No 428/2009 provides for Annex I to be updated in conformity with the relevant obligations and commitments, and any modification 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.

¹ OJ L 134, 29.5.2009, p. 1.

- (4) Annex I to Regulation (EC) No 428/2009 should be updated regularly so as to ensure full compliance with international security obligations, to guarantee transparency, and to maintain the competitiveness of exporters. Delays with regard to the updating of the Union list may have negative effects on security and international non-proliferation efforts, as well as on the performance of economic activities by exporters in the Union. At the same time, the technical nature of the amendments and the fact that those changes are to comply with decisions taken in the international export control regimes, means that an accelerated procedure should be used to put the necessary updates into force in the Union.
- (5) Article 9(1) of Regulation (EC) No 428/2009 establishes Union General Export Authorisations as one of the four types of export authorisations available under the Regulation. Such Authorisations allow exporters established in the Union to export specified items to specified destinations subject to conditions.

- (6) Annexes IIa to IIc of Regulation (EC) No 428/2009 set out the Union General Export Authorisations currently in force in the Union. Given the nature of those Union General Export Authorisations, there may be a need to remove certain destinations or items from them, in particular if changing circumstances show that facilitated export transactions should no longer be authorised for a particular destination or item. Such a removal of a destination or item should not preclude an exporter from applying for another type of export authorisation under Regulation (EC) No 428/2009.
- (7) In order to ensure regular and timely updates of the Union list in conformity with the obligations and commitments of Member States within the international export control regimes, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of amending Annex I to Regulation (EC) No 428/2009 within the scope of Article 15 of the Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

- (8) In order to allow for a swift Union response to changing circumstances as regards the assessment of the sensitivity of exports under Union General Export Authorisations, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending Annexes IIa to IIc to Regulation (EC) No 428/2009 as regards the removal of destinations or items from the scope of the Union General Export Authorisations. Given that such amendments should be made only in response to an increase in the assessment of the risk of the relevant exports and that the continued use of Union General Export Authorisations for those exports could have an adverse effect on the security of the Union and its Member States, an urgency procedure may be used by the Commission.
- (9) The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and *to the Council. **The Commission should provide full information and documentation on its meetings with national experts within the framework of its work on the preparation and implementation of delegated acts. In this respect, the Commission should ensure that the European Parliament is duly involved, drawing on best practices from previous experience in other policy areas in order to create the best possible conditions for future scrutiny of delegated acts by the European Parliament.*** [Am. 1]
- (10) Regulation (EC) No 428/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 428/2009 is amended as follows:

(-1) Article 4 is amended as follows:

(a) the following paragraph is inserted:

"3a. An authorisation shall also be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the authorities referred to in paragraphs 1 and 2, or by the Commission, that the items in question are or may be intended, in their entirety or in part, for use in connection with a violation of human rights, democratic principles or freedom of speech as defined in the Charter of Fundamental Rights of the European Union, by using interception technologies and digital data transfer devices for monitoring mobile phones and text messages and targeted surveillance of internet use, such as via monitoring centres or lawful interception gateways."; [Am. 11]

(b) paragraph 6 is replaced by the following:

"6. A Member State which imposes an authorisation requirement, in application of paragraphs 1 to 5, on the export of a dual-use item not listed in Annex I, shall, where appropriate, inform the other Member States and the Commission. The other Member States shall give all due consideration to this information, shall inform their customs administration and other relevant national authorities and shall impose the same authorisation requirement." [Am. 12]

(-1a) Article 5 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. A Member State may extend the application of paragraph 1 to non-listed dual-use items for uses referred to in Article 4(1) and to dual-use items for military end use and destinations referred to in Article 4(2), (3) or (3a)."; [Am. 13]

(b) paragraph 3 is replaced by the following:

"3. A Member State may adopt or maintain national legislation imposing an authorisation requirement on the brokering of dual-use items, if the broker has grounds for suspecting that these items are or may be intended for any of the uses referred to in Article 4(1) or (3a).". [Am. 14]

(-1b) In Article 6, paragraph 3 is replaced by the following:

"3. A Member State may extend the application of paragraph 1 to non-listed dual-use items for uses referred to in Article 4(1) and to dual-use items for military end use and destinations referred to in Article 4(2) or (3a).". [Am. 15]

(-1c) In Article 8, paragraph 1 is replaced by the following:

"1. A Member State shall prohibit or impose an authorisation requirement on the export of dual-use items not listed in Annex I for reasons of public security or human rights considerations.". [Am. 16]

(1) In Article 9, the following paragraphs are added:

"In order to ensure that only low-risk transactions are covered by the Union General Export Authorisations described in Annexes IIa to IIc, the Commission shall be empowered to adopt delegated acts in accordance with Article 23a concerning the removal of *to remove* destinations and items from the scope of Union General Export Authorisations included in Annex II if such destinations become subject to an arms embargo as referred to in Article 4(2). [Am. 4/rev]

Where, in the case of a significant change of circumstances as regards the assessment of the sensitivity of exports under a Union General Export Authorisation included in Annexes IIa to IIg, imperative grounds of urgency require a removal of particular destinations or items from the scope of a Union General Export Authorisation, the procedure provided for in Article 23b shall apply to delegated acts adopted pursuant to this Article.";

(2) Article 15 is amended as follows:

(a) *paragraph 1 is replaced by the following:*

***"1. The list of dual-use items set out in Annex I shall be updated in conformity with the relevant obligations and commitments, and any modification 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, and in conformity with any restrictive measure based on Article 215 TFEU.";* [Am. 18]**

(b) the following paragraph is added

***"3. The Commission shall be empowered to adopt delegated acts in accordance with Article 23a concerning updating the list of dual-use items set out in Annex I. The updating of that list shall be performed within the scope set out in paragraph 1. Where the updating of the list concerns dual-use items which are also listed in Annexes IIa to IIg or IV, those Annexes shall be amended accordingly.".* [Am. 2]**

(3) The following articles are inserted:

"Article 23a

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The ~~delegation of power~~ *to adopt delegated acts* referred to in Article 9(1) and Article 15(3) shall be conferred *on the Commission* for an ~~indefinite~~ *a* period of ~~time~~ *five years* from the date of entry into force of Regulation (EU) No/... [this Regulation] ... * . *The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five- year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period. [Am. 3]*

3. The delegation of powers referred to in Articles 9(1) or Article 15(3) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

* *OJ: Please insert the date of entry into force of the amending Regulation.*

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 9(1) or Article 15(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 23b

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 23a(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or the Council."

Article 2

This Regulation shall enter into force on the twentieth 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

For the European Parliament
The President

For the Council
The President