



Brussels, 22.10.2014
C(2014) 7567 final

COMMISSION DELEGATED REGULATION (EU) No .../..

of 22.10.2014

**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**

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 and/or can contribute to the proliferation of Weapons of Mass Destruction - 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 that are subject to controls in the European 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 be updated regularly so as to ensure full compliance with international security obligations, to guarantee transparency, and to maintain the competitiveness of exporters. 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.

Article 15(3) of Regulation (EC) No 428/2009 provides that the Commission shall be empowered to adopt delegated acts for 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.

The current EU control list was last updated by Regulation (EU) No 388/2012 of the European Parliament and of the Council, taking into consideration changes decided in the export control regimes until the end of 2010. Changes to the control lists decided in the export control regimes over the course of 2011 to 2013 require an amendment of Annex I of the Council Regulation (EC) No 428/2009. The draft delegated act therefore provides for a series of amendments to the EU control list concerning the control modalities, the technical descriptions, the removal or addition, of various dual-use items, such as, for example, graphite, frequency changers, machine tools, viruses and toxins, integrated circuits, explosives, cybertools etc.

The amendments to the EU control list in Annex I do not necessitate consequential amendments to Annexes IIa to II.g or IV in accordance with Art. 15.3.

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 consulted in the meeting held on 16 July 2014.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Regulation (EU) 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.

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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 items¹ 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. 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) Regulation (EC) No 428/2009 empowers the Commission to update the list of dual-use items set out in Annex I 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.
- (5) Regulation (EC) No 428/2009 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 428/2009 is replaced by the text set out in the Annex to this Regulation.

¹ OJ L 134, 29 May 2009, p. 1.

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, 22.10.2014

For the Commission
The President
José Manuel BARROSO