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THE EUROPEAN UNION**

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Position of the Council at first reading with a view to the adoption of a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL 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
- Adopted by the Council on 3 March 2014

REGULATION (EU) No .../2014
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

**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 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 (OJ C ...) and position of the Council at first reading of 3 March 2014 [(OJ ...)] [(not yet published in the Official Journal)]. Position of the European Parliament of ... [(OJ ...)] [(not yet published in the Official Journal)] [and decision of the Council of ...]

Whereas:

- (1) Council Regulation (EC) No 428/2009¹ 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) In order to enable Member States and the Union to comply with their international commitments, 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) Regulation (EC) No 428/2009 provides for the list of dual-use items set out in Annex I to that Regulation to be updated 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.

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 items (OJ L 134, 29.05.2009, p. 1).

- (4) 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 competitiveness of exporters. Delays with regard to the updating of that list of dual-use items 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 amendments are to be in conformity with decisions taken in the international export control regimes means that an accelerated procedure should be used to bring the necessary updates into force in the Union.
- (5) Regulation (EC) No 428/2009 introduces Union General Export Authorisations as one of the four types of export authorisations available under that Regulation. Union General Export Authorisations allow exporters established in the Union to export certain specified items to certain specified destinations subject to the conditions of those authorisations.
- (6) Annex II to Regulation (EC) No 428/2009 sets out the Union General Export Authorisations currently in force in the Union. Given the nature of such Union General Export Authorisations, there may be a need to remove certain destinations from the scope of those authorisations, in particular if changing circumstances show that facilitated export transactions should no longer be authorised under a Union General Export Authorisation for a particular destination. Such removal of a destination from the scope of a Union General Export Authorisation should not preclude an exporter from applying for another type of export authorisation under the relevant provisions of Regulation (EC) No 428/2009.

- (7) In order to ensure regular and timely updates of the common list of dual-use items in conformity with the obligations and commitments taken by 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 that 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 Annex II to Regulation (EC) No 428/2009 as regards the removal of destinations from the scope of the Union General Export Authorisations. Given that such modifications should only be made 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 imminent 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.
- (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) In Article 9(1), the following subparagraphs are added:

"In order to ensure that only low-risk transactions are covered by the Union General Export Authorisations included in Annexes IIa to IIf, the Commission shall be empowered to adopt delegated acts in accordance with Article 23a to remove destinations from the scope of those Union General Export Authorisations, if such destinations become subject to an arms embargo as referred to in Article 4(2).

Where, in cases of such arms embargoes, imperative grounds of urgency require a removal of particular destinations 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 paragraph."

- (2) In Article 15, 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 Annex I shall be performed within the scope set out in paragraph 1 of this Article. 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."

(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 power to adopt delegated acts referred to in Article 9(1) and Article 15(3) shall be conferred on the Commission for a period of five years from ... * . 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.
3. The delegation of power referred to in Article 9(1) and Article 15(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke 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.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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

5. A delegated act adopted pursuant to Article 9(1) and 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 of 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 by 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 at ...

For the European Parliament
The President

For the Council
The President
