Commission Implementing Regulation (EU) 2020/402 of 14 March 2020 making the exportation of certain products subject to the production of an export authorisation

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2015/479 of the European Parliament and of the Council of 11 March 2015 on common rules for exports[(1)], and in particular Article 5 thereof,

Whereas:

(1) Since the outbreak of the epidemiological crisis caused by the coronavirus SARS-CoV-2, the disease associated with it, the COVID-19, has been spreading fast across the world, reaching also the Union's territory. According to the European Centre for Disease Prevention and Control, the risk associated with COVID-19 infections for people in the Union is currently considered to be moderate to high, based on the probability of transmission and the impact of the disease. The virus spreads rapidly within the Union, and might have an enormous public health impact with substantial fatal outcomes in high-risk groups and significant economic and societal disruption.

(2) In this context, the need for personal protective equipment, as detailed in Annex 1, has already increased significantly. Given its nature and the prevailing circumstances, such type of equipment is an essential product since it is necessary to prevent the further spreading of the disease, and safeguard the health of medical staff treating infected patients.

(3) In line with Council Conclusions of the Health Ministers Council on 13 February 2020, a procurement procedure for personal protective equipment has been launched under the Joint Procurement Agreement for medical countermeasures. According to an indicative time-line and depending on the market situation, it might be finalized as of beginning of April.

(4) The demand for medical protective equipment has been exacerbated in the last days and is expected to continue increasing significantly in the imminent future with accompanying shortages developing in several Member States. Constraints exist throughout the EU single market to meet customers demand for the relevant Personal Protective Equipment, in particular mouth protection masks. At this moment in time, there are on-going efforts to increase manufacturing capabilities. This may feed into review of the measure as necessary and as situation evolves.

(5) Production of personal protective equipment such as mouth protection masks in the Union is currently concentrated in a limited number of Member States, namely

the Czech Republic, France, Germany, and Poland. Despite the fact that increased production has been encouraged, the current level of Union production and existing stocks will not be sufficient to meet the demand within the Union. This is particularly the case as this demand rises as a result of the epidemic situation and the personal protective equipment can be exported without restriction to other parts of the world.

(6) Some third countries have already officially decided to restrict exports of protective equipment. Others seems to have taken similar actions on a more informal basis. Some of these countries are also traditional suppliers to the Union market and this is further exerting pressure on the Union market.

(7) In order to remedy and prevent a critical situation, it is in the Union interest that the Commission takes an immediate action of a limited duration in order to ensure that exports of personal protective equipment are subject to an authorisation in order to ensure adequacy of supply in the Union in order to meet the vital demand.

(8) Exports of certain quantities of specific products may be authorised under specific circumstances such as to ensure assistance provided to third countries, and depending on the needs of the Member States. The administrative modalities for these authorisations should be left to the discretion of the Member States during the time of these temporary measures.

(9) There are vital needs of protective equipment within the Union with regard to hospitals, patients, field workers, civil protection authorities. Such vital needs are constantly monitored through the Union civil protection mechanism.

(10) Whereas this measure at present applies to personal protective equipment, as detailed in Annex 1, a need may arise to review the scope of the Annex and products covered by this Regulation.

(11) Due to the urgency of the situation, justified by the fast spreading of the COVID-19 infection, the measures provided for in this Regulation should be taken in accordance with Article 3(3) of Regulation (EU) 2015/479.

(12) In order to prevent speculative depletion of stocks, this implementing Regulation should enter into force on the day of its publication. In accordance with Article 5(5) of Regulation (EU) 2015/479, these measures should have a duration of six weeks,

HAS ADOPTED THIS REGULATION:

Article 1

Export authorisation

1 An export authorisation established in accordance with the form set out in Annex II shall be required for the export outside the Union of personal protective equipment listed in Annex I, whether or not originating in the Union. Such authorisation shall be granted by the competent authorities of the Member State where the exporter is established and shall be issued in writing or by electronic means.

2 Without the production of such export authorisation, the exportation is prohibited.

[[F1]3 Exports to Norway, Iceland, Liechtenstein, Switzerland, as well as the overseas countries and territories listed in Annex II of the Treaty and the Faeroe Islands, Andorra, San Marino and the Vatican City shall not be subject to the measures set out in paragraphs 1 and 2.**]**

Textual Amendments

F1 Inserted by Commission Implementing Regulation (EU) 2020/426 of 19 March 2020 amending Implementing Regulation (EU) 2020/402 making the exportation of certain products subject to the production of an export authorisation.

Article 2

Procedural aspects

1 If the protective equipment is located in one or more Member States other than the one where the application for export authorisation has been made, that fact shall be indicated in the application. The competent authorities of the Member State to which the application for export authorisation has been made shall immediately consult the competent authorities of the Member State or States in question and provide the relevant information. The Member State or States consulted shall make known within 10 working days any objections it or they may have to the granting of such an authorisation, which shall bind the Member State in which the application has been made.

2 Member States shall process applications for export authorisations within a period of time to be determined by national law or practice, which shall not exceed 5 working days, from the date on which all required information has been provided to the competent authorities. Under exceptional circumstances and for duly justified reasons, that period may be extended by a further period of 5 working days.

3 In deciding whether to grant an export authorisation under this Regulation, Member States shall take into account all relevant considerations including, where appropriate, whether the export serves, inter alia:

— to fulfil supply obligations under a joint procurement procedure in accordance with Article 5 of Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health[(2)];

— to support concerted support actions coordinated by the Integrated Political Crisis Response Mechanism (IPCR), the European Commission or other Union institutions;

— **[**[F2]to respond to the requests of assistance addressed to and handled by the UPCM (Union Civil Protection Mechanism), by third countries or international organisations and to enable the provisions of emergency supplies in the context of humanitarian aid;**]**

— to support the statutory activities of support companies abroad that enjoy protection under the Geneva Convention, and in so far as they do not impair the ability to work as a national support company;

— to support the activities of the World Health Organisation's (WHO) Global Outbreak Alert & Response Network (GOARN);

— to supply foreign operations of EU Member States including, military operations, international police missions and/or civilian international peacekeeping missions;

— for the supply of EU and Member State delegations abroad.

4 Member States may decide to make use of electronic documents for the purpose of processing the applications for export authorisation.

Textual Amendments

F2 Substituted by Commission Implementing Regulation (EU) 2020/426 of 19 March 2020 amending Implementing Regulation (EU) 2020/402 making the exportation of certain products subject to the production of an export authorisation.

Article 3

Final provisions

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union* and apply for a period of six weeks. It shall automatically cease to apply at the end of this six weeks period.

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

ANNEX I

Protective Equipment

The equipment listed in this Annex is in conformity with the provisions of Regulation (EU) 2016/425[(3)].

Category	**Description**	**CN Codes**
Protective spectacles and visors	— Protection against potentially infectious material, — Encircling the eyes and surroundings, — Compatible with different models of filtering facepiece (FFP) masks and facial masks, — Transparent lens, — Reusable (can be cleaned and disinfected) or single-use items	ex 9004 90 10 ex 9004 90 90
Face shields	— Equipment for the protection of the facial area and associated mucous membranes (ex: eyes, nose, mouth) against potentially infectious material, — Includes a visor of transparent material, — Usually includes fixations to secure over the face (e.g.: bands, temples) — Can include a mouth-nose protection equipment as described below, — Reusable (can be cleaned and disinfected) or disposable	ex 3926 90 97 ex 9020 00 00
Mouth-nose-protection equipment	— Masks for the protection of the wearer against potentially infectious material	ex 6307 90 98 ex 9020 00 00