Commission Delegated Regulation (EU) 2018/1922 of 10 October 2018 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

COMMISSION DELEGATED REGULATION (EU) 2018/1922

of 10 October 2018

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 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 items[(1)], and in particular Article 15(3) thereof,

Whereas:

(1) 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[(2)], the Missile Technology Control Regime[(3)], the Nuclear Suppliers Group[(4)], the Wassenaar Arrangement[(5)] 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 economic operators. The changes to the control lists adopted by the international non-proliferation regimes and export control arrangements in 2017 now require another amendment of Annex I to Regulation (EC) No 428/2009. In order to facilitate references for export control authorities and economic operators, Annex I to that Regulation should be replaced.

(4) Annexes IIa to IIf to Regulation (EC) No 428/2009 establish Union General Export Authorisations.

(5) Annex IIg to Regulation (EC) No 428/2009 establishes a list of dual-use items that are to be excluded from the scope of national general export authorisations and Union General Export Authorisaitons.

(6) Annex IV to Regulation (EC) No 428/2009 establishes authorisation requirements for certain intra-Community transfers.

(7) The amendments to the list of dual-use items set out in Annex I necessitate consequential amendments to Annexes IIa to IIg and Annex IV for dual-use items which are also listed in Annexes IIa to IIg and Annex IV.

(8) Regulation (EC) No 428/2009 empowers the Commission to update the list of dual-use items set out in Annex I as well as Annexes IIa to IIg and Annex IV 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.

(9) Considering the importance of ensuring full compliance with international security obligations as soon as practically possible, this Regulation should enter into force on the day following that of its publication.

(10) Regulation (EC) No 428/2009 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

(1) Annex I is replaced by the text set out in Annex I to this Regulation;

(2) Annexes IIa to IIg are replaced by the text set out in Annex II to this Regulation;

(3) Annex IV is replaced by the text set out in Annex III to this Regulation.

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, 10 October 2018.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX I

ANNEX **L**IST OF DUAL-USE ITEMS(referred to in Article 3 of this Regulation)

This list implements internationally agreed dual-use controls including the Wassenaar Arrangement[6], the Missile Technology Control Regime (MTCR)[7], the Nuclear Suppliers' Group (NSG)[8], the Australia Group[9] and the Chemical Weapons Convention (CWC).

GENERAL NOTES TO ANNEX I1.

For control of goods which are designed or modified for military use, see the relevant list(s) of controls on military goods maintained by individual Member States. References in this Annex that state "SEE ALSO MILITARY GOODS CONTROLS" refer to the same lists.

2.The object of the controls contained in this Annex should not be defeated by the export of any non-controlled goods (including plant) containing one or more controlled components when the controlled component or components are the principal element of the goods and can feasibly be removed or used for other purposes.N.B.

In judging whether the controlled component or components are to be considered the principal element, it is necessary to weigh the factors of quantity, value and technological know-how involved and other special circumstances which might establish the controlled component or components as the principal element of the goods being procured.

3.

Goods specified in this Annex include both new and used goods.

4.

In some instances chemicals are listed by name and CAS number. The list applies to chemicals of the same structural formula (including hydrates) regardless of name or CAS number. CAS numbers are shown to assist in identifying a particular chemical or mixture, irrespective of nomenclature. CAS numbers cannot be used as unique identifiers because some forms of the listed chemical have different CAS numbers, and mixtures containing a listed chemical may also have different CAS numbers.

NUCLEAR TECHNOLOGY NOTE (NTN)

(To be read in conjunction with section E of Category 0.)

The "technology" directly associated with any goods controlled in Category 0 is controlled according to the provisions of Category 0.

"Technology" for the "development", "production" or "use" of goods under control remains under control even when applicable to non-controlled goods.

The approval of goods for export also authorizes the export to the same end-user of the minimum "technology" required for the installation, operation, maintenance and repair of the goods.

Controls on "technology" transfer do not apply to information "in the public domain" or to "basic scientific research".

GENERAL TECHNOLOGY NOTE (GTN)

(To be read in conjunction with section E of Categories 1 to 9.)

The export of "technology" which is "required" for the "development", "production" or "use" of goods controlled in Categories 1 to 9, is controlled according to the provisions of Categories 1 to 9.

"Technology" "required" for the "development", "production" or "use" of goods under control remains under control even when applicable to non-controlled goods.

Controls do not apply to that "technology" which is the minimum necessary for the installation, operation, maintenance (checking) or repair of those goods which are not controlled or whose export has been authorised.

Note:

This does not release such "technolog"y specified in 1E002.e., 1E002.f., 8E002.a. and 8E002.b.

Controls on "technology" transfers do not apply to information "in the public domain", to "basic scientific research" or to the minimum necessary information for patent applications.

NUCLEAR SOFTWARE NOTE (NSN)

(This note overrides any control within section D of Category 0)

Section D of Category 0 of this list does not control "software" which is the minimum necessary "object code" for the installation, operation, maintenance (checking) or repair of those items whose export has been authorised.

The approval of goods for export also authorises the export to the same end-user of the minimum necessary "object code" for the installation, operation, maintenance (checking) or repair of the goods

Note:

The Nuclear Software Note does not release "softwar"e specified in Category 5 - Part 2 ("Information Securit"y).

GENERAL SOFTWARE NOTE (GSN)

(This note overrides any control within section D of Categories 1 to 9.)

Categories 1 to 9 of this list do not control "software" which is any of the following:

GENERAL "INFORMATION SECURITY" NOTE (GISN)

"Information security" items or functions should be considered against the provisions in Category 5 - Part 2, even if they are components, "software" or functions of other items.

EDITORIAL PRACTICES IN THE OFFICIAL JOURNAL OF THE EUROPEAN UNION

In accordance with the rules set out in paragraph 6.5 on page 108 of the Interinstitutional style guide (2015 edition), for texts in English published in the *Official Journal of the European Union*:

ACRONYMS AND ABBREVIATIONS USED IN THIS ANNEX

An acronym or abbreviation, when used as a defined term, are found in 'Definitions of Terms used in this Annex'.

DEFINITIONS OF TERMS USED IN THIS ANNEX

Definitions of terms between 'single quotation marks' are given in a Technical Note to the relevant item.

Definitions of terms between "double quotation marks" are as follows:

N.B.

Category references are given in brackets after the defined term.

"Accuracy" (2 3 6 7 8), usually measured in terms of inaccuracy, means the maximum deviation, positive or negative, of an indicated value from an accepted standard or true value.

"Active flight control systems" (7) are systems that function to prevent undesirable "aircraft" and missile motions or structural loads by autonomously processing outputs from multiple sensors and then providing necessary preventive commands to effect automatic control.

"Active pixel" (6) is a minimum (single) element of the solid state array which has a photoelectric transfer function when exposed to light (electromagnetic) radiation.

"Adjusted Peak Performance" (4) is an adjusted peak rate at which "digital computers" perform 64-bit or larger floating point additions and multiplications, and is expressed in Weighted TeraFLOPS (WT) with units of 10^{12} adjusted floating point operations per second.

N.B.

See Category 4, Technical Note.

"Aircraft" (1 6 7 9) means a fixed wing, swivel wing, rotary wing (helicopter), tilt rotor or tilt-wing airborne vehicle.

N.B.

See also "civil aircraf"t.

"Airship" (9) means a power-driven airborne vehicle that is kept buoyant by a body of gas (usually helium, formerly hydrogen) which is lighter than air.

"All compensations available" (2) means after all feasible measures available to the manufacturer to minimise all systematic positioning errors for the particular machine-tool model or measuring errors for the particular coordinate measuring machine are considered.

"Allocated by the ITU" (3 5) means the allocation of frequency bands according to the current edition of the ITU Radio Regulations for primary, permitted and secondary services.

N.B.

Additional and alternative allocations are not included.

"Angular position deviation" (2) means the maximum difference between angular position and the actual, very accurately measured angular position after the workpiece mount of the table has been turned out of its initial position

"Angle random walk" (7) means the angular error build up with time that is due to white noise in angular rate. (IEEE STD 528-2001)

"APP" (4) is equivalent to "Adjusted Peak Performance".

"Asymmetric algorithm" (5) means a cryptographic algorithm using different, mathematically-related keys for encryption and decryption.

N.B.

A common use of "asymmetric algorithm"s is key management.

"Authentication" (5) means verifying the identity of a user, process or device, often as a prerequisite to allowing access to resources in an information system. This includes verifying the origin or content of a message or other information, and all aspects of access control where there is no encryption of files or text except as directly related to the protection of passwords, Personal Identification Numbers (PINs) or similar data to prevent unauthorized access.

"Average output power" (6) means the total "laser" output energy, in joules, divided by the period over which a series of consecutive pulses is emitted, in seconds. For a series of uniformly spaced pulses it is equal to the total "laser" output energy in a single pulse, in joules, multiplied by the pulse frequency of the "laser", in Hertz.

"Basic gate propagation delay time" (3) means the propagation delay time value corresponding to the basic gate used in a "monolithic integrated circuit". For a 'family' of "monolithic integrated circuits", this may be specified either as the propagation delay time per typical gate within the given 'family' or as the typical propagation delay time per gate within the given 'family'.

N.B.1.

"Basic gate propagation delay tim"e is not to be confused with the input/output delay time of a complex "monolithic integrated circui"t.

N.B.2.'Family' consists of all integrated circuits to which all of the following are applied as their manufacturing methodology and specifications except their respective functions:

"Basic scientific research" (GTN NTN) means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective.

"Bias" (accelerometer) (7) means the average over a specified time of accelerometer output, measured at specified operating conditions, that has no correlation with input acceleration or rotation. "Bias" is expressed in g or in metres per second squared (g or m/s^2). (IEEE Std 528-2001) (Micro g equals 1×10^{-6} g).

"Bias" (gyro) (7) means the average over a specified time of gyro output measured at specified operating conditions that has no correlation with input rotation or acceleration. "Bias" is typically expressed in degrees per hour (deg/hr). (IEEE Std 528-2001).

"Biological agents" (1) are pathogens or toxins, selected or modified (such as altering purity, shelf life, virulence, dissemination characteristics, or resistance to UV radiation) to produce casualties in humans or animals, degrade equipment or damage crops or the environment.

"Camming" (2) means axial displacement in one revolution of the main spindle measured in a plane perpendicular to the spindle faceplate, at a point next to the circumference of the spindle faceplate (Reference: ISO 230/1 1986, paragraph 5.63).

"Chemical laser" (6) means a "laser" in which the excited species is produced by the output energy from a chemical reaction.