Commission Delegated Regulation (EU) 2016/1969 of 12 September 2016 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) 2016/1969

of 12 September 2016

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, 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 economic operators. The changes to the control lists adopted by the international non-proliferation regimes and export control arrangements in 2015 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 updated and consolidated.

(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 shall 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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2016/1969. (See end of Document for details)*

(7) The amendments to the EU dual-use control list 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) Regulation (EC) No 428/2009 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I, IIa to IIg and IV to Council Regulation (EC) No 428/2009 are amended in accordance with the Annexes to this Regulation:

(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, 12 September 2016.

For the Commission

The President

Jean-Claude JUNCKER

***Changes to legislation:** There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2016/1969. (See end of Document for details)*

ANNEX I

ANNEX I

List referred to in Article 3 of this Regulation

LIST OF DUAL-USE ITEMS

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

GENERAL NOTES TO ANNEX I

1. 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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2016/1969. (See end of Document for details)*

"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.

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

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

GENERAL SOFTWARE NOTE (GSN)

(This note overrides any control within section D of Categories 0 to 9.)

Categories 0 to 9 of this list do not control "software" which is any of the following:

a. Generally available to the public by being:

1. Sold from stock at retail selling points, without restriction, by means of:

a. Over-the-counter transactions;

b. Mail order transactions;

c. Electronic transactions; or

d. Telephone call transactions; and

2. Designed for installation by the user without further substantial support by the supplier;

N.B.: Entry a. of the General Software Note does not release "softwar"e specified in Category 5 — Part 2 ("Information Securit"y).

b. "In the public domain"; or

c. The minimum necessary "object code" for the installation, operation, maintenance (checking) or repair of those items whose export has been authorised.

N.B.: Entry c. of the General Software Note does not release "softwar"e specified in Category 5 — Part 2 ("Information Securit"y).

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*:

— a comma is used to separate the whole number from decimals,

whole numbers are presented in series of three, each series being separated by a thin space. The text reproduced in this annex follows the above-described practice.

ACRONYMS AND ABBREVIATIONS USED IN THIS ANNEX

***Changes to legislation:** There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2016/1969. (See end of Document for details)*

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

Acronym or meaning abbreviation	
ABEC	Annular Bearing Engineers Committee
AGMA	American Gear Manufacturers' Association
AHRS	attitude and heading reference systems
AISI	American Iron and Steel Institute
ALU	arithmetic logic unit
ANSI	American National Standards Institute
ASTM	the American Society for Testing and Materials
ATC	air traffic control
AVLIS	atomic vapour laser isotope separation
CAD	computer-aided-design
CAS	Chemical Abstracts Service
CDU	control and display unit
CEP	circular error probable
CNTD	controlled nucleation thermal deposition
CPU	Central processing unit
CVD	chemical vapour deposition
CW	chemical warfare
CW (for lasers)	continuous wave
DME	distance measuring equipment
DS	directionally solidified
EB-PVD	electron beam physical vapour deposition
EBU	European Broadcasting Union
ECM	electro-chemical machining
ECR	electron cyclotron resonance
EDM	electrical discharge machines
EEPROMS	electrically erasable programmable read only memory
EIA	Electronic Industries Association
EMC	electromagnetic compatibility
ETSI	European Telecommunications Standards Institute